# The Solicitors' Journal

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# The Solicitors' Journal

VOL. LXXX. **Saturday, November 7, 1936.** No. 45

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## Current Topics.

### The late Sir Henry Curtis Bennett.

In our issue of 24th October we announced the appointment of Sir Henry Curtis Bennett, K.C., as Chairman of the County of London Sessions in succession to the late Sir Percival Clarke, and the sorrowful task now falls to us to record his death which occurred with tragic suddenness at a festive gathering in which he appeared to be in his usual health, and, indeed, while he was in the course of a speech, in which he made jocular reference to his stoutness of build. First to those at the dinner where the sad event occurred and on the morrow in the wider circle of the profession where he was so well known, there was evoked a deep sympathy and keen regret at the passing of one who had played so notable a rôle in the domain of advocacy, and who had just entered upon his new career as a judge with the good wishes of his fellow members of the Bar, and, indeed, of the public generally, with the prospect of filling it to the satisfaction of all. His long and varied experience in the conduct of criminal cases would have proved a valuable apprenticeship for his new duties; but it was not to be; and he has been cut off in the mid-term of life, to be sincerely mourned by a large circle of friends. This is not the time to set out a catalogue of the notable cases in which he appeared; it must suffice to say that in their conduct he displayed a consummate art in no whit inferior to that of the great lawyers of the past. During the war he did useful service in dealing with spies and suspects, and after his return to practice he became Deputy-Chairman and later Chairman of Essex Quarter Sessions, and, also Recorder of Colchester—offices which initiated him into the work of the bench.

### Lawyers in the Cabinet.

The promotion to Cabinet rank of Mr. W. S. Morrison, who has been but a short time a member of the Government, and that in a subordinate capacity, is at once a tribute to the esteem in which his administrative capacity is held by the Prime Minister, and also a reminder that his accession of dignity brings the list of King's Counsel now included in that select body up to three—Sir John Simon, Sir Thomas Inskip and Mr. Morrison, or to four if we count the Lord Chancellor, who, as Sir Douglas Hogg, K.C., was an advocate of persuasive force and of much learning. It is, of course, no new thing to have lawyers, apart from the Lord Chancellor, in the inner circle of the Ministry from time to time. Among those of the past may be recalled Henry Dundas, who had filled the office of Lord Advocate for Scotland, who was said to have held his country, politically speaking, in the hollow of his hand, and who for many years was a member of Pitt's ministry. Pitt himself, was a member of the Bar, and at one time appears to have seriously contemplated the possibility of returning to its practice. Spencer Perceval, after holding office as Attorney-General, became Prime Minister, to have his career as such suddenly cut short by the hand of an assassin. Coming to more recent times we had Mr. Asquith, in Mr. Gladstone's cabinet, as Home Secretary, afterwards becoming Prime Minister, having "with him" in the Cabinet another King's Counsel—Mr. Augustine Birrell, who, however, achieved a more resonant success in the literary, than in the political, field. All those just mentioned, and it is not claimed that the list is exhaustive, were members of the Bar, but that section of the profession has had no monopoly in Cabinet honours. Several solicitors have reached the same exalted eminence. To mention those of the past, Mr. Henry Fowler, afterwards Viscount Wolverhampton, was at one time in busy practice and proved to be an excellent administrator. Sir William Joynson-Hicks was another who played a notable part in the House of Commons. As Mr. Birrell humorously said, Sir William found time not only to attend to public affairs but also to those of private clients, including the London General Omnibus Company "which occasionally found itself in court to meet the charge of running over stray foot-travellers—both Protestant and Papist—in the crowded streets of this great Metropolis." Then we cannot forget Mr. Lloyd George, who has the distinction of being the first member of the solicitor branch to become Prime Minister.

### The National Trust and Country House Preservation.

Last week we alluded to the Bill being promoted by the National Trust with special reference to the provisions therein which are designed to secure the preservation of land by means of covenants. Another not less interesting series of provisions has been drafted with a view to facilitating the preservation of historic country houses. Lord Zetland explained that the powers it was sought to obtain by the measure would lead to the trust becoming trustees and guardians of many houses which were also monuments of national, artistic, and historic importance. It was only natural, he said, that the owners before consenting to relinquish their freehold in their properties should wish to be satisfied that their family associations with them should not be terminated, and there was little doubt that, even in the case of those who

had realised the impossibility of the permanent retention of their property in face of the existing system of taxation, the fear of an immediate severance of their connection with it had served to deter them from transferring it to the National Trust. Hitherto, the speaker continued, the law in the shape of the Mortmain and Charitable Uses Acts had proved a formidable obstacle in the way, since it forbade the retention of a life interest in the case of a gift. The National Trust desired to obtain exemption from certain provisions of the Acts, not for any selfish reason but simply in order to secure for the nation the preservation of a part of its heritage of beauty which would otherwise be lost to it, and they felt sure that Parliament would grant them the exemption they required, all the more so in that educational trusts had already been granted a similar exemption. With regard to endowment it was observed that while many owners of historic houses were not in a position to hand over capital sums they were able to offer land in the neighbourhood which might not be of special natural beauty or necessary for protecting the amenities of the house. Many colleges and other bodies had powers to hold land for endowment and the trust were seeking similar powers, partly because they would greatly facilitate arrangements with owners of historic country houses, and partly because over long periods of time land was a wise investment for institutions like the National Trust. It was urged, moreover, that the new powers which were being sought would greatly strengthen the hands of the trust in any action it might be found possible to take with a view to the establishment of national parks.

### Town Planning: Scope of the Problem.

Some trenchant observations on the subject of town planning were offered by Mr. Percy Thomas, the President of the Royal Institute of British Architects, in the course of his inaugural address at the opening of the 1936–37 session last Monday. Architects, he urged, knew that the cure for many of the ills from which civilisation suffered lay in the ordered replanning and rebuilding of our congested towns and cities, but so far we had merely tinkered with the complex problem of town planning. Much of the statutory town planning had, it was intimated, been only two dimensional—lines on a map—and not visualised as three dimensional which was the medium in which the architect had to work. What was really required was an adequate planning technique for the grouped development of towns and villages, not an extension of ribbon development under more spacious conditions. The Restriction of Ribbon Development Act, 1935, was cited as an example of two-dimensional planning with the observation that within the city the expedients adopted were hardly better and showed no more foresight. As regards traffic, he said (we quote from *The Times*) that palliatives such as roundabouts, traffic lights, and one-way streets had temporarily staved off the inevitable, but their limits were being reached. Nothing but bold and vigorous replanning—surgery, not doctoring—could save the modern town from a futile congestion that was not far off. The need for guidance and firm control in the planning of London was emphasised, as was also the need for greater height in building without increasing the population density, with the object of freeing land for parks, public gardens, and easier traffic flow. To achieve this, the speaker said, skyscrapers were not necessary. If half the existing two and three storey buildings in London were doubled in height and the rest pulled down there would be abundant room for the widest and finest boulevards in the world. No one, he observed, would suppose that the cure was as easy as that. Merely building higher was not advocated as a cure in itself, but as a means to be judicially used where circumstances demanded. The problem was essentially one for the creative planner—the architect who could plan a living town, not the engineer who could plan a traffic system.

### The Town of the Future.

Mr Thomas alluded to the planning and design of the new communities and satellite towns likely to be laid out in future as a field which would be opened out to the architect. In them, he said, would be found the greatest opportunities for solving the dual problem of urban overcrowding and of countryside preservation near the great centres of population. He thought that opportunities for demonstrating planning on an adequate scale for civic design in which industrial location was not associated with squalor and muddle and the enjoyment of natural amenities was the normal accompaniment of daily life would be provided by these new towns. Would, he asked, these opportunities be taken? Would the authorities ever claim the powers they should have to compel the proper location of industry, or must everything continue to be left to the irrational competition of vested interests? He suggested that in all this there might be a vicious circle. The officials said that there was no established planning technique so generally accepted as to make its national presentation in legal form possible, while the townplanners and architects said that there could be no established technique until they had the chance to work on a large scale. Whatever view may be taken of some of the speaker's criticisms, it is clear that the co-operation of architects and town planning authorities is much to be desired.

### Horse-drawn Traffic.

Problems associated with the desirability or otherwise of prohibiting the use of certain roads by horse-drawn vehicles are not exempt from the generality of the proposition that there are two sides to every question, and although the advantages likely to be derived from the proposals to prohibit slow-moving traffic in certain selected roads in Westminster and Holborn are sufficiently obvious, it is thought that expression in these columns should be given to the other point of view as presented by the joint deputation from the National Farmers' Union and the National Horse Association which waited upon the Minister of Transport last Wednesday week. According to an official statement, the deputation represented that the regulations in themselves would involve great hardship and inconvenience to users and breeders of horses, and called attention to the importance of horse breeding to the agricultural industry as a whole, and urged the Minister to refrain from imposing regulations. According to *The Times*, Mr. Hore Belisha, in his reply, said he had previously undertaken not to put the regulations into force until he had received the representations of the deputation, and he undertook to give the matter his closest personal attention.

### Safety Glass.

Readers' attention is drawn to the Minister of Transport's recent reminder to the effect that safety glass for wind-screens of motor-cars will be compulsory for all vehicles from 1st January next. It may be recalled in this connection that reg. 14 of the Motor Vehicles (Construction and Use) Regulations, 1931, which were made by the Minister under powers conferred on him by the Road Traffic Act, 1930, is in the following terms: "All glass fitted to wind-screens or windows facing to the front on the outside of any motor vehicle except glass fitted to the upper deck of a double decked vehicle shall be safety glass: Provided that this Regulation shall not apply until 1st January, 1937, to any motor vehicle registered under the Roads Act, 1920, on or before 1st January, 1932." "Safety glass" is defined as "glass so constructed or treated that if fractured it does not fly into fragments capable of causing severe cuts" (*ibid.*, reg. 3 (1)). Moreover all glass or safety glass fitted to motor vehicles is required by reg. 66 of the same rules to be "maintained in such condition that it does not obscure the vision of the driver while the vehicle is being driven on the road." Owners of vehicles registered on or before 1932 should therefore see that these comply with the foregoing regulations by the end of the present year.

### Board of Education Report.

THE Report of the Board of Education for 1935 (Cmd. 5290), while following in the main the plan of previous years, contains this year an unusually interesting feature in the form of a survey of education covering the period of the reign of KING GEORGE V. The sense of responsibility for the individual of which those years have witnessed an increasing appreciation has had, it is intimated, a marked effect on curriculum, school buildings, and educational practice generally, and the report alludes to the recognition of the necessity for ministering to the demand of children for a practical and creative outlet to their energies and the consequent inclusion in the curriculum " of those more realistic studies which ' may become the recreations and ornaments of hours of leisure in maturer years.' " The report records a decline in the number of children on the elementary school registers, the figures for the end of March, 1934, and 1935, being respectively 5,576,752 and 5,402,052. On the other hand the number of new pupils entering the secondary schools has increased from 92,490 to 94,546. Of the 110 schools which were closed during the year, forty-six were council schools, sixty-one Church of England, and three Catholic. Corresponding figures relating to preliminary proposals which were approved during the year for new schools were respectively 151, three and twenty-four. For further particulars readers must be referred to the report itself, which is published by H.M. Stationery Office, price 3s. 6d., net.

### Tithe Rating: New Circular.

IN the course of a communication recently addressed to all rating authorities, Circular 1581 (H.M. Stationery Office, price 1d.), the Minister of Health directs attention to Circular 1564 (see 80 SOL. J. 678) which refers to the provisions of s. 23 of the Tithe Act, 1936, in regard to the reduction of rates payable for the half-year ending on 30th September, 1936, in respect of tithe rentcharge issuing out of land, any of which was on 1st April, 1936, agricultural land as defined by the Act (*ibid.*, s. 47 (1)). The new circular gives directions concerning the apportionment that will be necessary by the fact that an assessment to rates in respect of tithe rentcharge in one ownership usually relates to more than one tithe rentcharge and often to a considerable number. It is pointed out that the facts which an owner will have to ascertain in order to enable him to furnish the Tithe Redemption Commission with the particulars required by s. 5 of the Act will also enable him to provide the rating authority with the information that will be necessary in support of a claim for a reduction in rates under s. 23. Particulars so furnished will in most cases enable the rating authority to identify the land out of which the tithe rentcharges, in respect of which a reduction of rates is claimed, issued, and to verify from their rating records whether each of these separate tithe rentcharges comes within the statutory provision for reduction. Where doubt arises as to the identity of the tithe area, the question, it is indicated, can be determined by reference to the copy of the tithe map deposited in the parish under the Tithe Act, 1836, usually in the custody of the incumbent and churchwardens of the parish for the time being, or in the possession of the parish council under provisions formerly contained in the Local Government Act, 1894, and now reproduced in the Local Government Act, 1933. Rating authorities are advised to await the submission of a claim before considering making an allowance or refund in any particular case, and, in view of the subsequent examination by the district auditor, to keep the records in such a way as to show readily the method on which the necessary calculations have been made, while the keeping open of the rate accounts for the half-year in question until all claims have been paid is not a course which commends itself to the Minister. The present circular is concerned only with rentcharges in lay ownership. A further communication is to be sent on the question of the arrangements in regard to the over-payment of rates in respect of the same half-year assessed on tithe rentcharge in the ownership of Queen Anne's Bounty, the Ecclesiastical Commissioners and the Welsh Church Commissioners, and, for the present, rating authorities are advised not to take any further step with regard to allowances or refunds under s. 23 (2) of the Act in respect of tithe rentcharge in the ownership of these bodies.

### Recent Decisions.

IN *Ellison* v. *Calvert and Heald* (*The Times*, 31st October), the House of Lords reversed a decision of the Court of Appeal and restored that of a county court judge who awarded the widow and infant daughter of an electrician employed by the respondents the sum of £527, under the Workmen's Compensation Act, 1925. The workman died as the result of blood poisoning from a small wound on the back of his head. The Court of Appeal held that there was no evidence on which the county court judge could reasonably have concluded that the wound was caused at work. The House of Lords held that the question was entirely one of fact for the county court judge. There was evidence to support his finding and LORD ATKIN intimated that he would unhesitatingly have come to the same conclusion.

In *Kirk* v. *Eustace* (*The Times*, 3rd November) the Court of Appeal (SLESSER and SCOTT, L.JJ., EVE, J., dissenting) reversed a decision of the county court and held that a covenant to pay a weekly sum in a separation deed to a wife so long as she should continue to live a chaste life, with the proviso that payment should cease in the event of the parties being reconciled and cohabitation being resumed, ceased on the death of the covenantor. The decision of the county court rested mainly on the ground that the husband's estate was liable during the remainder of the wife's life, there being no contrary intention expressed in the deed within the meaning of s. 80 (1) of the Law of Property Act, 1925, but the Court of Appeal negatived this view. Leave to appeal to the House of Lords was granted.

In *International Trustee for Protection of Bond-holders Aktiengesellschaft* v. *The King* (*The Times*, 3rd November) the Court of Appeal reversed a decision of BRANSON, J., and held that the " gold clause " in a bond for $1,000, under which the obligor undertook to pay the principal sum and interest " either in the City of New York . . . at the office or agency which will be maintained in the said city by the obligor for the service of the bonds of this issue in gold coin of the United States of America of the standard of weight and fineness existing on 1st February, 1917, or in the City of London, England, in sterling money at the fixed rate of $4.86\frac{1}{2}$ to the pound " meant that the holders were entitled to be paid (*a*) if the New York option was exercised, such an amount in dollars as was equivalent to the value of the currency at that time of $1,000 gold specified in the obligation, or (*b*) if the London option was exercised, the equivalent of $1,000 at the rate named in sterling money of England. BRANSON, J., held that, while the obligation to pay in London at the fixed rate remained in full force, payment in gold in the United States had become illegal and there was no obligation under the bond to pay in currency the amount calculated to represent the same amount of gold as the specified gold coin would have contained. The Government of Great Britain and Ireland was the obligor and proceedings were taken by petition of right. Leave to appeal to the House of Lords was granted.

In *Petch, P.M.* v. *Petch, C.U.* (*The Times*, 4th November), where a petitioner moved the court to rescind a decree *nisi* for dissolution of her marriage, which had been granted to her on the ground of the adultery of her husband, and substitute therefor a decree of judicial separation, the President of the Probate, Divorce and Admiralty Division granted leave for the prayer in the petition to be amended forthwith, without re-service, to one for judicial separation, rescinded the decree *nisi*, and pronounced a decree of judicial separation in the petitioner's favour.

# Validity of Railway Bye-Laws.

THE doctrine of *ultra vires*, which was considered in a recent case in relation to a bye-law of a railway company prohibiting, *inter alia*, the transfer of partly-used tickets from one person to another, raises a number of difficult questions in regard to the scope of such regulations. It is therefore proposed shortly to set out with reference to the authorities some of the basic considerations in regard to the matter.

The first principle to which it is desired to draw attention is that which requires a corporate body invested with a power of formulating bye-laws to keep within the limits marked out by the authorising statute. This appears clearly from the decision *Dearden* v. *Townsend* (1865), L.R. 1 Q.B. 10, where the court considered a railway bye-law which provided that no passenger should be allowed to enter or travel in a carriage without having paid his fare and obtained a ticket which the passenger was to show when required and surrender on demand before leaving the company's premises. It provided, moreover, that any passenger not so producing or surrendering his ticket should pay the fare from the place from which the train started or forfeit a sum not exceeding forty shillings. The Railways Clauses Consolidation Act, 1845, authorised the company to make bye-laws not repugnant to the statute, s. 103 of which expressly made provision for the case of persons intending to evade the payment of their fares and rendered fraudulent intention the gist and essential ingredient of the offence. Cockburn, C.J., observed in the course of his judgment: "If the Company, thus alone authorised to make bye-laws, were by a bye-law to constitute the same facts an offence, striking out the ingredient of intention to defraud, they would be altering an enactment of the statute, and legislating in a sense repugnant to the provisions of the statute." And if further exemplification of the same principle is required we find Lindley, J., saying with reference to ss. 108 and 109 to the same statute in *Dyson* v. *London and North Western Railway* (1881), 7 Q.B.D. 32: "We have that expressed which I suppose would be implied, that the bye-laws must be in conformity with the provisions of the general and the special Act." "The bye-law," Mathew, J., said in the same case (the facts of which are considered more fully *infra*), "appears to have been framed without reference to the statutory power conferred upon the company, for it seems to have been intended to secure to the company more than Parliament intended they should have."

The significance of a fraudulent intent in a case involving a breach of railway bye-laws needs careful consideration. In the case last mentioned intent to defraud the company was found as a fact by the magistrates, but the conviction was quashed. In *Dearden* v. *Townsend*, *supra*, and *Huffam* v. *North Staffordshire Railway* [1894] 2 Q.B. 821, there was no fraudulent intent on the part of the traveller, and in the former case this was the first and in the latter the sole ground of the decision. On the other hand, *Lowe* v. *Volp* [1896] 1 Q.B. 256—a tramway case, but important for our inquiry—shows that the absence of fraud will not always and of itself provide an answer. These cases must now be shortly analysed

The terms of the bye-law considered in *Dearden* v. *Townsend* have already been sufficiently indicated. The dispute arose in this way. The traveller inadvertently went beyond his station on a return journey, and on again reaching his destination tendered in addition to his return ticket for the original journey the return fare between his station and that to which he had inadvertently been taken. The latter was refused and, on the method of calculation provided by the bye-law, the fare from the starting point of the train from which he last alighted was demanded. The court held that the bye-law only applied to the case of a person who had and wilfully refused to produce or give up his ticket, and not to the case of one travelling without having paid for and obtained a ticket with no intention to defraud the company. Alternatively, if the bye-law extended to the latter case, it would have been void for the reason already indicated.

Under the bye-law considered in *Huffam* v. *North Staffordshire Rly.*, any person using or attempting to use a ticket on any day for which such ticket was not available was subjected to a penalty not exceeding 40s. The appellant, without fraudulent intent, travelled with a ticket not available for the day on which he used it, and was convicted of an offence under the bye-law. Mathew, J., intimated that the conviction was wrong. The appellant was innocent of any attempt to defraud and the bye-law was clearly bad. It would have been bad under the Railways Clauses Consolidation Act, 1845, and the position was not affected by the repeal of the first part of s. 103 of that Act by the Statute Law Revision Act, 1892, in view of the Regulation of Railways Act, 1889, s. 5 (3) (*a*) of which imposed a penalty on one who travelled or attempted to travel without having previously paid his fare—but still with a similar qualification "with intent to avoid payment thereof."

The bye-law in *Dyson* v. *London and North Western Rly.* was in the following terms: "Any person travelling without the special permission of some duly authorised servant of the company in a carriage or by a train of a superior class to that for which his ticket was issued is hereby subject to a penalty not exceeding 40s., and shall, in addition, be liable to pay his fare according to the class of carriage in which he is travelling from the station where the train originally started, unless he shows that he had no intention to defraud." The defence in the other cases did not avail here because, as already explained, it was found as a fact that the appellant intended to defraud the company; but the court held that the conviction could not be supported because if the bye-law could be divided after the words "penalty of 40s.," and each part was capable of being enforced apart from the other, the first part was contrary to s. 103 of the Railways Clauses Consolidation Act, 1845, and if it were taken as a whole it was unreasonable (see *Saunders* v. *South Eastern Rly.*, 5 Q.B.D. 456, and *Watson* v. *London and Brighton Rly.*, 4 C.P.D. 118).

In the fourth case to which reference has been made—*Lowe* v. *Volp*—the court held that a bye-law made by a tramway company to the effect that each passenger should show his ticket (if any) when required so to do to the conductor or any duly authorised servant of the company was not unreasonable. It was within the statutory powers conferred upon tramway companies for "regulating the travelling in or upon any carriage belonging to them," and the words of the bye-law "if any" prevented any hardship from arising. Kay, L.J., intimated, however, that bye-laws imposing penalties for mere inadvertence would have been on an entirely different footing. The section of the enabling Act "provides," the learned Lord Justice said, "that if any person avoids or attempts to avoid payment of his fare, or, having paid his fare for a certain distance, knowingly and wilfully proceeds beyond such distance, and does not pay his fare therefor, or attempts to avoid payment thereof, or knowingly and wilfully refuses to quit the carriage on arriving at his destination, such person shall be liable to a penalty. Now, if the company were to make bye-laws providing that a person who inadvertently did any of these things should be liable to a penalty, those bye-laws would be clearly unreasonable" (see further on this point *London Passenger Transport Board* v. *Sumner*, 79 SOL. J. 840, and the article entitled "Liability to Pay Tram Fares," 79 SOL. J. 912).

A further point to be noted is that the mere fact that a bye-law creates a new offence does not render it inoperative. The authority for this proposition is a statement by Channell, J., in *Gental* v. *Rapps* [1902] 1 K.B. 160, where the court negatived a decision of the magistrates to the effect that in order to be binding a bye-law prohibiting swearing or the use of offensive or obscene language on tramcars should have been qualified by the phrase "to the annoyance of the passengers"

—see *Strickland* v. *Hayes* [1896] 1 Q.B. 290. "A bye-law is not repugnant to the general law," said the learned judge, "merely because it creates a new offence, and says that something shall be unlawful which the law does not say is unlawful. It is repugnant if it makes unlawful that which the general law says is lawful. It is repugnant if it expressly or by necessary implication professes to alter the general law of the land." The addition of something not inconsistent with the provisions of a statute creating the same offence was not, it was intimated, sufficient to make a bye-law bad as repugnant.

Reference has already been made to s. 5 (3) of the Regulation of Railways Act, 1889, in connection with the judgment in *Huffam* v. *North Staffordshire Rly., supra.* The decision in *Reynolds* v. *Beasley* [1919] 1 K.B. 215, contains a judicial interpretation of the same section in reference to the non-transferability of railway tickets—a subject which was also considered in the case referred to at the outset of the present article, *London Midland and Scottish Rly.* v. *Greaver and Another*, 80 SOL. J. 878. In the former case, it was held that the phrase "paid his fare" meant paid his fare to the railway company, and accordingly that one who had purchased a workman's ticket marked "not transferable," which had been issued by the railway company to another person, was guilty of an offence. In the latter case, where one of the respondents handed to the other the return half of an excursion ticket, the Lord Chief Justice intimated that if information had been laid under the section aforesaid, conviction must have followed on proof of fraud (an "intent to avoid payment" is, as has already been explained, a condition precedent to the application of the section).

In the recent case, however, the facts of which are set out in the report already referred to, proceedings were launched under bye-law 6 of the company's bye-laws and regulations, which provides: "No person shall sell or buy or attempt to sell or buy any ticket . . . or transfer or receive any partly-used ticket . . . to or from any other person with intent that any person shall use the same for the purpose of travelling . . . unless the ticket shall at the time of issuing thereof purport to be transferable, and no person shall knowingly and wilfully use or attempt to use any ticket which has been sold, bought, transferred or received in contravention of this bye-law." A Divisional Court reversed a decision of a Metropolitan magistrate who held that the bye-law was void and *ultra vires*, on the ground that it was repugnant to the general principles of law. The Lord Chief Justice said that in his opinion the bye-law represented a very careful endeavour on the part of the company to prevent the sale and purchase of railway tickets by or from persons who were not their duly authorised servants or agents, because in ninety-nine cases out of a hundred such transactions were transactions for avoiding payment either of the whole fare or of some proper portion of it. Looking at the matter in that way, he was of opinion that the bye-law could be supported.

Certain conclusions may be drawn from our survey. Mere inadvertance on the part of a transgressor does not of itself constitute proper matter for the penal provisions of a bye-law. On the other hand, the creation of a new offence is not *per se* fatal to its validity. As to intent to avoid payment, this, as we have seen, is frequently an essential ingredient in the corresponding provision of the enabling statute and it is not open to a corporate body to formulate a regulation similar in terms, but for the excision of such intent. How far such an intent is a necessary factor in cases which offend bye-laws designed to prevent the transfer of non-transferable tickets is not, perhaps, a question which, from the authorities, admits of a ready answer. The most that can be done in this direction is to refer to the above quoted statements of the Lord Chief Justice in *London Midland & Scottish Rly.* v. *Greaver and Another* where a bye-law of this character is exhibited in light of the almost invariable intent to avoid payment of the whole fare, or a part of it, with which its transgression is accompanied. And it may be noted that in *Reynolds* v. *Beasley* the respondent ordered to be convicted asserted that he had no intention to defraud the railway company and paid the transferor, the holder of a workman's weekly season ticket, the price he would have paid if he had obtained from the company a daily workman's ticket.

# The New County Court Rules.

(*Continued from p.* 866.)

## SERVICE.

UNDER the new Ord. VIII, r. 6, substituted service can be ordered in the case of a default summons, and under Ord. VIII, r. 35, where personal service cannot be effected, the registrar, if so requested, must take all necessary steps to enable the plaintiff to apply for an order for substituted service.

Another new rule with regard to default summonses is that where one which is to be served by bailiff remains unserved for at least one month from the date of issue, the registrar must send to the plaintiff at the end of the first and every subsequent month during which it remains unserved a notice in Form 39 to that effect, containing the reasons for non-service (Ord. VIII, r. 37).

It is also important to note that under the new Ord. VIII, r. 2 (as was pointed out in a letter to this Journal, *ante*, p. 857) personal service can apparently no longer be effected by forms of process servers, as is possible under the old rules (Ord. VII, r. 33). The new rule provides that any document of which personal service is required may be served by (i) a bailiff of the court, or (ii) a party or a person in his permanent employ, or (iii) a solicitor of a party, or a solicitor acting as agent of such solicitor, or some person in the permanent or exclusive employ of either.

*Admission, Defence and Counter-claim.*

A form will be appended to the summons in an ordinary action, and this may be used to admit liability for the whole or part of a claim and to request time for payment. Under the old Ord. IX, r. 2 (2), an admission had to be delivered to the registrar five clear days at least before the return day. Under the new Ord. IX, r. 1 (1), a defendant has eight days from the service of the summons on him, inclusive of the day of service.

Notice of acceptance must be sent to the registrar and to the defendant within three days of receipt of the notice of admission (Ord. IX, r. 1 (3)). Under the old Ord. IX, r. 2 (4), the plaintiff can send his notice of acceptance within such reasonable time before the return day as the filing of the admission by the defendant may permit. He can give such notice of acceptance at any time before the return day, or even attend on the return day and accept the admission and offer without notice.

On and after 1st January, 1937, a failure to deliver a notice of admission or acceptance within the proper time will not be final, as they can be delivered at any time before the return day, but any costs properly incurred in consequence of a party's delay may be ordered against such party (Ord. IX, r. 1 (5)). Delivery of an admission with a proposal for time of payment will not relieve a defendant of the duty to appear in court, unless before the return day he receives notice of acceptance (Ord. IX, r. 1 (6)).

It is also provided that the plaintiff must sent a notice of non-acceptance within three days of receipt of an admission which he does not accept (Ord. IX, r. 1 (4)). No express provision is made as to costs in case of failure of the plaintiff to send notice of non-acceptance, and it is difficult to see how any costs can be ordered against the plaintiff if he fails to send such a notice.

In all ordinary actions a new rule, Ord. IX, r. 4, requires defendants disputing their liability in whole or in part to deliver a defence at the court office within eight days of the service of the summons, and the registrar must then send a copy to the plaintiff. It will be remembered that under the old rules the onus is on the plaintiff to require a defence if he wants one, in cases where there is a right of appeal under s. 120 of the 1888 Act, except in the case of a default summons or where a special defence such as infancy, the Statute of Limitations, bankruptcy discharge, etc., is relied on.

A defence, other than in the form provided, may be delivered, and it will have to be accompanied with as many copies as there are plaintiffs. The registrar must then send a copy to each plaintiff.

A defendant is not necessarily debarred from delivering a defence after eight days from service, and may even appear to dispute the claim without delivering a defence at all, but the court can order him to pay any costs properly incurred as a result of his delay or failure. In the case of failure to deliver a defence within eight days, the court also has power at any time before trial to order the defendant to deliver a defence (Ord. IX, r. 4 (4) and (5)). If he disobeys this order he may be debarred from defending (Ord. IX, r. 4 (6)).

The plaintiff can require further particulars by notice to the defendant, and within three days after the notice the defendant must supply these. In case of entire or partial failure to supply these, the court can order him to supply them. In case of disobedience to the order he may be debarred from defending (Ord. IX, r. 4 (8)). It is also provided that the delivery by a defendant of a defence does not relieve him from the obligation to appear in court on the return day. Any counter-claim must be set up within eight days of service of the summons.

There is no express provision in the new rules for entry of judgment on a default summons by letter (Old Rules, Ord. VII, r. 34A), but in all cases, where the defendant fails to pay into court or deliver a defence, admission or counter-claim within the requisite eight days from service, "the service being duly proved," the plaintiff may, upon filing a præcipe in the required form and producing the plaint note, have judgment entered (Ord. X, r. 2 (1)). But the mere fact of delay in delivering a defence will not prevent a defendant from delivering a defence at any time before judgment is entered. It will not be necessary to explain the delay in an affidavit in order to be let in to defend, as in the old Ord. IX, r. 34F.

Under Ord. X, r. 7, the registrar, if on the day fixed for disposal of the action he is satisfied that the defendant, when he delivered his admission, intended to dispute the whole or any part of the claim, or to set up a counter-claim, may give leave to defend or set up a counter-claim on such terms as to costs or otherwise as he thinks fit, and then fix a date for trial. The minimum number of clear days' notice of the date of trial to be given to the parties in default summonses under the new rules is reduced from ten to five (Ord. X, r. 3).

*Payment into court.*

Under the new Ord. XI, r. 1, the time for payment in of the full claim and costs in an ordinary action is four days from the service of the summons and eight days in a default action. The action is then stayed and, except in the case of an infant or lunatic plaintiff, the amount in court is paid out without any order of the court.

The plaintiff has three days after the receipt by him of the notice of payment in to deliver his notice of acceptance (not as in the old Ord. IX, r. 13 (1) "within such reasonable time before the return day as the time of payment by the defendant has permitted"). If he fails to give notice of acceptance within this limited time, he may give notice of acceptance subsequently, but the money in court cannot be paid out without an order of the court, and the court may order him to pay any costs reasonably incurred by the defendant since the date of payment in (Ord. XI, r. 9 (a) and r. 11).

If a plaintiff takes money out of court in a libel or slander action he will be able under the new rules to apply to the judge, on notice in writing, for leave to make an approved statement in open court (Ord. XI, r. 13).

The old Ord. IX, r. 26, that no communication of payment into court may be made to the jury until after verdict, is much amended. It is provided in the new Ord. XI, r. 15, that except in an action to which a defence of tender before action is pleaded, or in which a plea under the Libel Acts, 1843 and 1845, has been filed, no statement of the fact that money has been paid into court shall be inserted in the pleadings, or made to the judge or jury at the trial, until all questions of liability and the amount of debt and damages has been decided. The judge must, however, take the fact and amount of payment into court into account when he exercises his discretion as to costs.

*Third party procedure.*

There will be no difference under the new rules between the third party procedure in an ordinary action and that in a default action. Further, the right to issue a third party notice will extend not only to contribution or indemnity claimed (as under the old Ord. XI, r. 1), but also to cases where a defendant claims (*a*) that he is entitled to any relief or remedy relating to or connected with the original subject-matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or (*b*) that any question or issue relating to or connected with the subject-matter is substantially the same as some question or issue arising between the plaintiff and the defendant, and should properly be determined not only as between the plaintiff and the defendant, but as between the plaintiff and the defendant and the third party, or between any or either of them (Ord. XII, r. 1).

Leave will have to be obtained from the court in all cases and notice of the application will have to be served on the plaintiff and filed in the court office within eight days of the service of the summons, inclusive of the day of issue. On the receipt by the registrar of notice, all proceedings in the action are stayed until the date of the application (Ord. XII, r. 1 (2)).

It is also a new provision, in line with the new general rule about defences (Ord. IX, r. 4, *supra*), that if a third party disputes the plaintiff's claim as against the defendant by whom the notice has been given, or his own liability to the defendant, he must, within eight days of the service of the notice, inclusive of the day of service, deliver a defence at the court office and appear at court on the day fixed for trial. The new rules concerning defences (Ord. IX, r. 4, paras. (3) to (8), *supra*), apply to such defences, with the necessary modifications (Ord. XII, r. 2 (1)).

Provision is also made for the addition of fourth and subsequent parties, subject to the same rules as the addition of third parties (Ord. XII, r. 4).

(*To be continued.*)

## Company Law and Practice.

**Fixed or Unit Trusts. —III.**

In the last two issues of this journal I have endeavoured in this column to give a summary of the first three parts of the Report of the Departmental Committee—now we come to Pt. IV, which contains the recommendations made by the committee. Obviously, this part is of considerable importance, though the fact that the recommendations can hardly be reproduced in an Act of Parliament exactly as they are made precludes one from being able to regard them as absolutely final. Nevertheless, it is desirable for everyone interested to have some knowledge of these recommendations, because in certain cases there are

recommendations that the legislation to be introduced should be retrospective.

Clearly, therefore, anyone who is concerned with the formation of a new unit trust should have a knowledge of the report—and this knowledge can only be satisfactorily obtained by a study of the report itself. It would be quite impossible to set out here any detailed summary of the recommendations—but I propose to give my readers an outline of them, so that they may have a general idea of the lines on which the report moves.

In Section A of Part IV, the report first examines the position of a unit trust *qua* the Companies Act, 1929; it points out that ss. 34 to 38 and ss. 354 and 355 of the Act cannot apply to an offer of units, but suggests that s. 356 may. My readers will remember that s. 356 (7) defines a share for the purposes of that section as meaning (unless the context otherwise requires) the shares of a company, whether a company within the meaning of the Act or not, and as including debentures or units. The same sub-section defines units as meaning any interest or interests (by whatever name called) in a share.

Taking this definition in conjunction with s. 356 (1) it would appear that house-to-house offering of units for purchase is prohibited; the report rather cautiously says that "if s. 356 be held . . . to apply to units in unit trusts," this result will follow. It goes on to point out that, on that hypothesis, certain information must accompany an offer in writing to any member of the public of units for purchase unless the units are quoted or dealt in on a recognised Stock Exchange in Great Britain, and the offer so states. It is then stated that it is doubtful whether the advertisements and circulars so far issued are offers within s. 356, and even if they are, the particulars required by s. 356 are not sufficient in the case of unit trusts. The particulars so required have been the subject of comment in this column before now, and reference should be made to the section for the full terms of them.

The committee's first recommendation, therefore, is that every unit trust should be registered, and that the managers should file with the registrar certain documents and information before proceeding to sell participation in the trust; in the case of existing trusts, it should be filed within some period after the Act comes into force. May one here put in a plea that we should return to the, perhaps, illogical word "file" used in the Companies (Consolidation) Act, 1908, instead of the more accurate but more cumbrous "deliver for registration" used in the 1929 Act? No doubt the person who delivers the document to Bush House is not in fact actually filing it, but one word of four letters seems infinitely preferable to three words of an aggregate of twenty-two.

This file should be open to inspection on payment of a small fee; and the documents to be filed should include—

(1) a copy of the deed constituting the trust;

(2) the names and addresses of the managers and of the promoters, and the names, addresses and descriptions of the directors and secretary of the managers (a later recommendation is that managers must be incorporated bodies, and, so far as possible, incorporated in the United Kingdom);

(3) copies of all agreements between the manager or promoters and the trustee relating to remuneration or any other matter;

(4) a copy of a statement giving the information referred to in Appendix II of the report, signed by the directors of the managers and by the promoters.

Appendix II of the report fills more than two closely printed pages, and a summary cannot give a satisfactory idea of what it contains; a mere list of the headings will, however, show the kind of thing that is aimed at. The headings are as follows: Management Companies, Trustee Companies, Auditors, Voting Rights, Remuneration of Trustee Companies, Costs of Management, Trust Property, Price, Re-purchase of Units (or sub-units) by Managers, Income and Yield, Promoters and Property other than Stock Exchange Securities.

The next recommendation has its inspiration in the provisions which govern insurance companies, and is to the effect that the managers should deposit say £20,000 with the Paymaster-General in respect of each unit trust which they manage. Such sum is to form part of the general assets of the managers when, but only when, the court is satisfied that all liabilities of the managers of the unit-holders have been discharged, including the provision of a sufficient sum to cover expenses of management up to the expiration of the trust. The question at once arises as to what is to happen to existing trusts, and the recommendation is that exemption should be given to trusts already in existence if they close within three months of the report and remain closed. "Closing," it should be explained, refers to the point of time when the managers cease to sell units and only buy them back.

Upon the due filing of the necessary documents and the making of the deposit a certificate of registration is to be issued—it is to be an offence to offer units for sale without a certificate of registration in respect of the trust in which the units are being offered.

The committee next turns its attention to the status of the trustee, and suggests that the qualification required of a corporation before it can act as a custodian trustee, which is set out in the Public Trustee (Custodian Trustee) Rules, 1926, is not sufficiently stringent for a trustee of a unit trust. They therefore go further by saying that the trustee of a unit trust should be a corporation constituted under the law of the United Kingdom or of any part thereof, and having a place of business there and empowered by its constitution to undertake trust business, having a capital for the time being issued of not less than £500,000, of which not less than £250,000 shall have been paid up in cash.

Section B of Part IV, which is one of the most important of the whole report, deals with accounts. Unfortunately it is quite impossible within the compass of an article such as the present even to give a general idea of it, and he who desires more information must turn to the report itself. I can only say here that very considerable disclosure is required in detail—particularly so as to show how the managers have dealt with the units and what the results of those dealings have been. From the point of view of the company lawyer it may be noted that every management company (whether a private company within the meaning of the Companies Act, 1929, or not) must file a copy of every balance sheet and profit and loss account required to be prepared under s. 123 of the 1929 Act, and also a unit (or sub-unit) dealings account in respect of each trust for the period covered by the profit and loss account.

The report then goes into considerable detail as to additional matter to be inserted in the balance sheet and the profit and loss account, and states what is required in the unit dealings account; and shows what is considered necessary for the accounts of the trust.

The next section deals with various matters relating to the trustees and trust deeds; it recognises that the trustees may have considerable latitude as to indemnities, but differentiates the position of the managers, which are to have a provision similar to that set out in s. 152 of the Companies Act, 1929, as to directors, managers and officers of a company. My readers will remember that this section cuts down very greatly the indemnity that such persons may have. In Appendix IV certain provisions which should be compulsory in every trust deed are set out, among them being a provision allowing for the transfer of units, while it is also considered that it should be possible to have unit trusts wound up under provisions analogous to those in Part X of the Companies Act, 1929, if the court considers a winding up just and equitable. Trustees and managers should be independent the one of the other.

When we come to the paragraphs of the report dealing with advertisements we find something quite novel, which deserves

most careful consideration to see whether it might not usefully be applied to companies to which the Companies Act, 1929, applies. The committee obviously felt that a good deal of flexibility was desirable in this connection, and they therefore report that where an advertisement or circular is intended merely to call the attention of the public to the existence of a unit trust it should be publishable without being regarded as an offer for sale if limited—

(*a*) to stating the name and type of the trust ;

(*b*) to stating the name and address of the managers ;

(*c*) to describing and commending the class of investment authorised ;

(*d*) to indicating the minimum amount which can be invested ; and

(*e*) to stating that full information can be obtained at a given address.

If not so limited the advertisement or circular must be regarded as an offer for sale, and must give all the information specified in Appendix II. This Appendix, of which the bare headings are given above, contains the information required to be filed on registration. The circular must be filed and signed not only by every director of the manager, but also as having been seen and approved by the trustee.

It should certainly be considered whether something of the sort could not be applied to companies so as to preclude those horrible affairs sometimes called "Abridged Prospectuses," which strike, and rightly strike, such terror in Lincoln's Inn. It would not, one would think, be difficult to devise some analogous limitation on documents not complying with the provisions as to prospectuses and yet, in effect, soliciting subscriptions.

The report next turns its attention to taxation questions, and recommends—

(*a*) that settlement duty should be exigible on the presentation of a unit trust deed and further duty as and when further property is brought in ;

(*b*) that transfers of units or sub-units should attract stamp duty, subject to repayment in certain circumstances when the units or sub-units have been cancelled ;

(*c*) that bearer certificates should be dutiable ;

(*d*) that contract notes in respect of the purchase or sale of units or sub-units should be deemed to be contract notes within the Finance (1909–10) Act, 1910 ; and

(*e*) that a written instrument of transfer should be required.

Lastly, we come to the miscellaneous section of the report, and I have space only to make the briefest references to the principal subject dealt with in it.

Restrictions on names similar to those imposed by s. 17 of the Companies Act, 1929, are recommended, and a good many safeguards as to auditors. In regard to the distribution of income the report suggests the furnishing of a statement giving very detailed information in regard to the matter, while liability for false statements in advertisements is also touched upon.

At the close of the report are suggestions for giving unit-holders a measure of control, by enabling meetings of them to be held under certain conditions. A regular annual meeting is not looked on favourably, owing to the cost, but the trustees or some proportion of unit-holders are to have power to summon meetings, which by a three-quarters majority may remove a trustee or manager and appoint new ones, deal with the auditors, give directions as to the use of the votes attributable to the underlying securities, and appoint a committee—this last presumably as a watchdog.

A power analogous to that contained in s. 135 of the Companies Act, 1929 (appointment by the Board of Trade of an inspector to conduct an investigation), is sought, and a section analogous to s. 153, to enable alteration in trust deeds to be effectuated, is suggested. It is to be hoped that, if this is done, the concurrent jurisdiction will not be allowed to invade this sphere, but that the Companies Court (obviously the most suitable tribunal) will be allowed to function without competition.

Thus ends a short and I fear imperfect summary of what must be regarded as a masterly production ; done with great dispatch, and complete thoroughness, the report is a model of what such a report should be. It shows clearly the necessity for early action, and it is to be hoped that the legislation which, it is understood, is now pending, will be quickly forthcoming and readily intelligible.

## A Conveyancer's Diary.

[CONTRIBUTED.]

**Administration of Assets.**

AN interesting and somewhat important case has recently been decided on the subject of administration of assets, which I do not think has yet found its way into the reports. The case is *Re Hardy*, and was decided by Luxmoore, J. The point at issue was in what order the assets of a solvent testator were applicable for the payment of debts. The relevant provisions are A.E.A., 1925, s. 34 (3), and Sched. I, Pt. II. They are as follows :—

"34. . . . (3) Where the estate of a deceased person is solvent his real and personal estate shall, subject to rules of court and the provisions hereinafter contained as to charges on property of the deceased, *and to the provisions, if any, contained in his will*, be applicable towards the discharge of the funeral, testamentary and administration expenses, debts and liabilities payable thereout in the order mentioned in Part II of the First Schedule to this Act."

The italics are mine.

Part II of the 1st Sched. so far as relevant to the point involved in *Re Hardy* is as follows :—

"1. Property of the deceased undisposed of by will . . . "

Paragraph 2 covers property given in a residuary gift.

"3. Property of the deceased specifically appropriated or devised or bequeathed (either by a specific or general description) for the payment of debts.

"4. Property of the deceased charged with, or devised or bequeathed (either by a specific or general description) subject to a charge for the payment of debts . . .

"8. The following provisions shall also apply—

"(*a*) The order of application may be varied by the will of the deceased."

Now, in *Re Hardy* the material circumstances were as follows : The testatrix purported to make a residuary gift, which on the true construction of the will the learned judge held not to catch a substantial part of the estate. That part of the estate was therefore undisposed of. The "residuary gift," however, was a gift in the common form on trust to sell and to hold the proceeds on trust to pay the various liabilities and debts. The issue was between those whose interest it was to contend that the debts and liabilities fell on the part undisposed of and those who claimed that they fell on the property the subject of the "residuary gift." The whole question turned on whether the gift on trust for sale and to hold the proceeds on trust to pay the debts and liabilities was a sufficiently plain indication of the testator's intention to oust the provisions of Pt. II of Sched. I of the A.E.A. If it was, the words which I have italicised in A.E.A., s. 34 (3), and para. 8 (*a*) of Pt. II of the schedule would come into play, and the property subject to the "residuary gift" would bear the burden. If not, para. 1 of Pt. II would apply, and the burden would fall on the property undisposed of.

The problem is a very pretty one, whose existence was pointed out, though it was not resolved, by the Court of Appeal in *Re Kempthorne* [1930] 1 Ch. 268 : see per Lawrence, L.J., at p. 299. For A.E.A., s. 34 (3), explicitly provides

26.1.28

that Pt. II is only to apply "subject to the provisions, if any, contained in his will." But yet in Pt. II itself we find, as low down as paras. 3 and 4, classes of property whose very definition depends on the terms of the will, for those classes are classes which the will has marked out for the payment of debts either by specific appropriation to that purpose or by a gift of them subject to a charge for that purpose.

There is a certain amount of leaning upon the comparable provisions of the law in force before 1926. But it is not really in point, as the order laid down in Pt. II is an entirely new order. The decision, therefore, really broke new ground, as there had previously been no absolutely plain decisions on the point under Pt. II. *Re Atkinson* [1930] 1 Ch. 47, approaches the point, but does not quite cover it.

His lordship decided that para. 1 of Pt. II applied, and that therefore the liabilities and debts must fall on the property undisposed of. The ground for the decision seems to have been that the very fact of the presence of paras. 3 and 4, with their references to an appropriation for or charge of debts, at a later point in Pt. II, showed that the legislature intended the provisions of the will, subject to which Pt. II takes effect in view of the wording of A.E.A., s. 34 (3), and Sched. I, Pt. II, para. 8 (*a*), to be stronger than provisions merely directing such an appropriation or charge if they were successfully to oust or vary the order prescribed by Pt. II. In short, it would appear that it would be unsafe to rely on any expression having this effect, short of a direct provision that "I exclude the order of application of assets laid down in Pt. II of the First Schedule to the Administration of Estates Act, 1925." The reader may be reminded of the notes in "Key," Vol. II, pp. 787 and 833, where the learned editors point out what very strong expressions are necessary to oust the rule in *Allhusen* v. *Whittell*.

The foregoing account is necessarily unsatisfactory, and it is to be hoped that a proper report of this case may be available before long, but the effect of the decision is stated with substantial accuracy.

**Restraints on Anticipation.**

A point which has not yet, so far as I am aware, been decisively cleared up is how the attitude of the court to applications for the removal of restraints on anticipation is affected by the enactment of the Law Reform (Married Women and Tortfeasors) Act, 1935. That Act provides in effect (by s. 2) that a restraint on anticipation purported to be imposed by an instrument executed on or after the 1st January, 1936, shall be ineffective. There are, of course, various ancillary provisions. But the new Act does not affect any restraints existing at the end of 1935. Moreover, it is to be observed that the words used are "instrument executed," not "instrument coming into force." The consequence is that a restraint can still be validly imposed by the will, made in or before 1935, of a testator dying after 1935. There is a further proviso, however, that if he dies after 1945 the will is to be deemed to have been executed after 1935, whenever it was in fact executed (s. 2 (3) (*c*)). Incidentally, it is perhaps worth remarking that if a testator has made a will imposing a restraint in or before 1935 and now wishes to change it, he will be well advised not to execute a new will, if he wishes to keep the restraint intact, but should make his alteration by codicil.

The legislature has, then, definitely expressed itself in a sense adverse to restraints, bnt restraints will be with us for many years yet. Consequently, for many years to come, married women will continue to attempt to get their restraints removed under s. 169 of the Law of Property Act. Has the Act of 1935 made that task easier? It is very difficult to express a view on this point, as cases under the section are heard in chambers and are therefore unreported, but my own view is that it will be found that the court has not relaxed the very stringent view which it used to adopt in regard to these applications. It is well known that it has always been very difficult indeed to get a restraint removed, and that nothing but most exceptional circumstances offer such a prospect of success as to justify risking the expense of the application. There are a number of cases on the predecessor of s. 169, which will be found in "Wolstenholme," and which amply bear out this proposition. For several reasons I do not think that this attitude will have been affected by the recent Act. In the first place, nothing in the new Act touches the terms of s. 169: the power to remove restraints is still, as it always has been, an entirely discretionary power. The applicant cannot hope to succeed unless she can first engage the sympathy of the court for her case and circumstances; in short, she must have substantial merits, and must not merely wish to get at the money; secondly, restraints on anticipation are a matter of pure equity: they are something created by the Court of Chancery itself without any assistance from the legislature. The court is thus likely to be tenacious in upholding them until such time as the legislature explicitly abolishes them altogether. Finally, the fact is that the legislature has not abolished a single existing restraint, and has even left a way open for new restraints to come into being for another ten years. That being so, it would be legitimate to suppose that the legislature meant the existing restraints to go on exactly as they were before. To have done otherwise would have been to make a retrospective cancellation of rights which the settlors and testators who created existing restraints undoubtedly had at the time they created them. Consequently, applicants can hardly expect the court, which is far more than Parliament a defender of existing rights, to do by way of discretion under s. 169 that which the legislature itself has not seen fit to do.

For these reasons, I do not think that applications under s. 169 should be advised any more freely than they have ever been, in spite of the Act of 1935. At the same time, I hope that some case brought under the section will be adjourned into court for full argument, so that we may have a reported decision to make the point perfectly plain.

# Landlord and Tenant Notebook.

**Farm Tenants' Fixtures.**

The Agricultural Holdings Acts have not dealt with the matter of fixtures in nearly so radical a manner as they have dealt with that of compensation to tenants. Apart from the series of provisoes qualifying the provision relating to fixtures, there is no prohibition of contracting out. Consequently, the position at common law has still to be borne in mind. Fortunately, it can be ascertained by reference to two authorities: the leading case of *Elwes* v. *Maw* (1802), 3 Ea. 28, which lays down the rule, and *Mears* v. *Callender* [1901] 2 Ch. 388, which indicates its limits.

The defendant in *Elwes* v. *Maw* had been tenant of a farm under a lease for twenty-one years, in the course of which he had built on the land demised a substantial beast-house, a carpenter's shop, a fuel-house, a cart-house, a pump-house and a foldyard. All these he removed before the term expired, and the question was whether he was within his rights. A great number of authorities were cited to and reviewed by Lord Ellenborough, who held that to extend the exceptions relating to trade and domestic fixtures to agricultural fixtures would be an innovation. His lordship also considered that it would be an undesirable innovation, but made it quite clear that the quality of the innovation was not a ground of his judgment. Indeed, earlier in the judgment criticism is levelled at Lord Kenyon, who, a year earlier, had decided a case relating to greenhouses in terms which made it difficult to say whether what ought to be the law was not being confused with what was the law. Of this, more presently.

Among the authorities cited on behalf of the tenant were cases in which a fire-engine installed in a coal-mine, and a

cider-mill erected on a farm, had been held to be removable. Lord Ellenborough distinguished these decisions as being based on the proposition that the selling of coal in the one case, and the production of cider in the other, were trades. The greenhouse decision of Lord Kenyon, could, his lordship observed, conceivably be supported on the same lines. But it was not clear whether Lord Ellenborough disapproved Lord Kenyon's judgment as well as the method employed in forming it, and nearly a century passed before the doubt as to the status of greenhouses was resolved.

The point was decided very shortly when, in *Mears* v. *Callender*, Cozens-Hardy, J., after stating that he was not satisfied that the two judgments were at variance, said that if they were he preferred the view that a glass-house erected by a nurseryman for the purpose of his trade might be removed.

The position at common law, then, may depend on whether a tenant is carrying on a trade or is carrying on agriculture. The cider-mill decision would appear to be a border-line case, and the distinction must often be a fine one. Modern legislation has made the defining of "agriculture" important in other ways; under the Scottish "de-rating" Act it has been held that land used for a silver fox fur farm was not agricultural land. It would seem, then, that fixtures affixed in furtherance of the production of coal, cider, tomatoes and fur fall within the common-law exception; but where the land is used for the production of meat or wheat, the tenant must rely on the Agricultural Holdings Act, 1923.

The provisions of s. 22 (1) of that statute, the main clause of which enacts that fixtures shall be the tenant's property and shall be removable by him before or within a reasonable time after expiration of the term, attach certain conditions precedent and subsequent to the exercise of the right of removal. Most important is the provision entitling the landlord to a month's notice of the intention to remove. During the month the landlord may elect to purchase the fixture at its fair value (to be decided by arbitration under the Act, in the event of failure to agree); but apart from this, the omission to give notice may have other consequences, as was shown by *In re Harvey and Mann's Arbitration* (1920), 89 L.J. K.B. 687 (C.A.). The arbitration reviewed in that case had dealt not with the matter of price, but with the question whether the cost of removing and re-fixing an engine, and the amount of depreciation, had been validly taken into account when assessing compensation for disturbance. As no notice of intention to remove had been given by the applicant, the Court of Appeal, upholding the county court, held that the removal was unlawful and no claim could be entertained in respect of that engine.

The right is also dependent on the tenant's having paid all rent and observed all the other obligations of the tenancy; not before the notice of intention is given, but before actual removal.

In effecting removal the tenant must do as little damage as possible to the freehold, and what damage he does he must afterwards make good.

It will be seen that these provisoes purport to qualify the right of removal only, and not to affect the right of ownership declared or conferred by the main clause. I say "declared or conferred" because the question of property in removable fixtures during the term at common law is the subject of conflicting authority. It will also be seen that in one respect the statute enlarges the right of removal in another way: removal may be effected within a reasonable time after determination of the term. Now, as regards the proviso imposing a condition that notice of intention be given, the effect of an omission would, it follows from *In re Harvey and Mann's Arbitration, supra*, be to vest the fixture in the landlord if not soon (i.e., when it becomes too late to give notice) before, immediately on, the expiration of the tenancy. But suppose that, notice having been given, the landlord sees the tenant set about the removal in a manner calculated to do more damage to the surrounding matter than is necessary, can he step in and declare that the right is forfeited? Or, suppose that the tenant fails to make good the damage, can the landlord claim the removed fixture? These points have not been adequately dealt with.

There are, of course, fixtures which may give rise to a claim for compensation for improvements under s. 1, which may suit the parties better than removal or purchase under s. 22. Indeed, the substantial beast-house, carpenter's shop, fuel-house and other works which were the subject-matter of *Elwes* v. *Maw* would now fall within that section and within the first clause of the first part of the First Schedule. But the improvements in Pt. I are those for which consent is necessary, which is just what the modern counterpart of Mr. Elwes might withhold. And as the modern counterpart of Mr. Maw might well sign a lease containing a clause excluding the operation of s. 22, which would be perfectly valid (see *Premier Dairies, Ltd.* v. *Garlick* [1920] 2 Ch. 17, in which a covenant to deliver up, mentioning new buildings, had that effect) the leading case is still a factor to be considered.

## Our County Court Letter.

### HAIRDRESSER AND CUSTOMER.

In the recent case of *Robertson* v. *Putman and Wife*, at Canterbury County Court, the claim was for damages for negligence. The plaintiff's case was that the second defendant carried on a hairdressing business as Maison Gloria. The plaintiff was having a permanent wave, during which her hair was "cooked" for eleven and a half minutes. The first defendant had left her, after the curlers had been fixed, and he did not return for ten minutes. The plaintiff was then in agony and her hair was ginger. The second defendant contended that she herself attended to the plaintiff, as the first defendant had merely turned off the steam at the second operation. The plaintiff's scalp was normal, when she left the shop, and no complaint was made for some time afterwards. The allegation of scalding then came as a shock to the defendants. Judgment was given for the plaintiff for £200 and costs. Compare a case, noted under the above title, in the County Court Letter in our issue of the 13th June, 1936 (80 Sol. J. 460), and a leading article similarly entitled in our issue of the 18th April, 1936 (80 Sol. J. 296).

### THE REMUNERATION OF ARTISTS.

In *Gardiner* v. *Cornish Riviera Printing Co. Ltd.*, recently heard at Falmouth County Court, the claim was for £16 for eight pictures supplied and £84 as damages for breach of contract. The plaintiff's case was that he was engaged to paint a series of eight pictures, for reproduction on post-cards, in return for a payment of £2 per picture (in respect of the copyright) as and when published, and a royalty of 10s. per 1,000 packets of eight cards sold. The plaintiff had received £4 for expenses, and was asked to paint further pictures until the defendants were satisfied. He contended, however, that he had performed his part of the bargain, as the foreman printer had stated that the pictures submitted were among the best the defendants had had for reproduction. The defendants' case was that three of the pictures were unsuitable for reproduction, and the plaintiff was, therefore, asked to paint three others in their place. There was no desire to wound an artist's feelings by asking him to paint what was foreign to his nature. The plaintiff, however, had two styles, one of which was suitable for reproduction and the other not. He had, therefore, readily agreed to paint three more in the appropriate style, but had not, in fact, done so. As the bargain was to supply pictures suitable for the requirements of the defendants, they had a reasonable right to decide which were suitable. His Honour Judge Lias

gave judgment for the plaintiff for £16 for painting the pictures, and £7 10s. as damages, with costs, subject to a stay of execution for fourteen days. Compare *Robinson* v. *Graves* [1935] 79 Sol. J. 180, in which the Court of Appeal held that a contract to paint a picture was not a sale of goods, and a note or memorandum in writing was unnecessary, even though the consideration exceeded £10.

ACCIDENT ON CONTRACTOR'S RAILWAY.

In the recent case of *Stewart* v. *Shellbourne and Co. Ltd.*, at Maidstone County Court, the claim was for damages for negligence. The plaintiff was employed by the Thames Portland Cement Co. Ltd., for whom the defendants were constructing a jetty. A girder, in connection with the jetty, was supported by a sleeper, which projected towards an adjacent railway line. The result was that a light truck, in which the plaintiff was travelling, was struck by the sleeper and derailed. The consequent injuries to the plaintiff included two broken ribs, and he could therefore not work for two months. The defence was a denial that the sleeper derailed the truck, as loaded trucks often came off the line. His Honour Judge Clements gave judgment for the plaintiff for £75 and costs. It is to be noted that the above was a claim at common law, not against the workman's employer, but against a third party. The amount recovered was greater than that which could have been awarded under the Workmen's Compensation Acts.

# Obituary.

Sir HENRY CURTIS BENNETT.

Sir Henry Honywood Curtis Bennett, K.C., J.P., who was appointed Chairman of the London Sessions on the 16th October last, died suddenly in London on Monday, 2nd November, at the age of fifty-seven. The son of the late Sir Henry Curtis Bennett, Chief Metropolitan Magistrate, he was educated at Radley College and Trinity College, Cambridge. He was called to the Bar by the Middle Temple in 1902, took silk in 1919, and became a Bencher of his Inn in 1926. He served in the Secret Service during the war, and in 1922 he received the honour of knighthood. Sir Henry was Conservative Member of Parliament for Chelmsford from 1924 to 1926. He was Chairman of the Essex Quarter Sessions, and he was Recorder of Colchester from 1929 until his appointment last month as Chairman of the London Sessions.

Mr. J. E. DELL.

Mr. John Edward Dell, solicitor, a partner in the firm of Messrs. Dell & Loader, of Brighton and Shoreham, died on Sunday, 1st November, at the age of sixty-one. Mr. Dell, who was admitted a solicitor in 1896, was Clerk to Southwick Urban Council from 1899 until 1933.

Mr. J. B. MARSTON.

Mr. John Beale Marston, solicitor, of Chester, died on Saturday, 31st October, at the age of forty-eight. Mr. Marston was admitted a solicitor in 1921.

Mr. G. G. PLANT.

Mr. George Gosling Plant, solicitor, senior partner in the firm of Messrs. Steavensons, Plant & Park, of Darlington, died in a nursing home at Newcastle, on Wednesday, 28th October, at the age of fifty-nine. Mr. Plant was admitted a solicitor in 1898. He was appointed a magistrate for Durham County in 1933, and sat on the Barnard Castle bench. He was a director of the Legal Insurance Co. Limited.

Mr. E. S. RUDRAM.

Mr. Ernest Schiller Rudram, solicitor, senior partner in the firm of Messrs. Rudram, Braithwaite & Co., of New Square, Lincoln's Inn, and Richmond, Surrey, died on Tuesday, 27th October, at the age of thirty-four. Mr. Rudram was admitted a solicitor in 1926.

# To-day and Yesterday.

Legal Calendar.

2 November.—When Lord Eldon presented a marble bust of himself to the Honourable Society of the Middle Temple on the 2nd November, 1832, he had been a member for sixty years all but a couple of months, and it was already thirty-five years since he had attained the office of Treasurer. In the laborious early years following his admission, when he lived like a hermit and worked like a horse, achievement and distinction must have seemed to lie very far ahead.

3 November.—On the 3rd November the Treasurer and Masters of the Bench acknowledged the gift of the bust "which in their opinion will form one of the most distinguished ornaments of their Hall and serve to perpetuate his connection with a Society which is proud to have enrolled among its members so great a lawyer, so eminent a judge and so honourable a man." His lordship replied with equal civility, hoping that his industry had "enabled him to render the exercise of his humble talent not discreditable to that Honourable Society."

4 November.—On the 4th November, 1818, fourteen years exactly before the day of his death, Mr. Justice Abbott succeeded Lord Ellenborough as Chief Justice of the King's Bench. For nine years he held the place without a peerage, nor did he want one, for he considered that the state of his fortune would not have justified him in accepting the honour according to his views of expediency and justice to his family. Eventually, however, he entered the House of Lords as Lord Tenterden.

5 November.—When Matthew and Patrick Kennedy murdered a watchman on Westminster Bridge in 1770, they set in motion a very unusual series of legal proceedings. In due course they were convicted and sentenced to death, but respited by royal clemency. The widow of the dead man, however, invoked the archaic practice of lodging an appeal of murder, and on the 6th November the prisoners came into the Court of King's Bench to plead to it. As she did not appear, she was non-suited, for she had come to terms, accepting £350. She had wept bitterly at receiving the price of her husband's blood, at first refusing to touch it, but finally she held out her apron and the money was swept into it. The men thus saved from the gallows were transported.

6 November.—On the 6th November, 1766, Lord Chancellor Camden "went in great state to Westminster Hall and opened the respective courts. His lordship was dressed in a magnificent robe, richly laced, attended by divers of the nobility, the judges and proper officers. Being come into court, the Lord Privy Seal received his oath, the clerk of the court reading it. The procession was the grandest ever known on the like occasion, consisting of fifty-one coaches besides his lordship's new state coach which was very superb."

7 November.—The case of *Blundell* v. *Catterall*, decided in the King's Bench on the 7th November, 1821, is notable for a discussion on sea bathing. Said Best, J.: "Men have from the earliest times bathed in the sea and, unless in places or at seasons when they could not consistently with decency be permitted to be naked, no one ever attempted to prevent them . . . Bathing promotes health. By bathing, those who live near the sea are taught their first duty, namely, to assist mariners in distress. They acquire by bathing confidence amidst the waves . . . Bathing machines were used before my time and I believe before that of the oldest person now alive, and I think the use of them is essential to the practice of bathing. Decency must prevent all females and infirmity many men from bathing, except from a machine."

8 November.—On the 8th November, 1828, Matthew Hale, destined to become a great chief justice, was admitted to Lincoln's Inn.

The Week's Personality.

Before he took up the study of the law, Matthew Hale had been a gay and elegant young man. After he entered Lincoln's Inn, he completely changed. He renounced going to the theatre, considering that plays "are a great consumer of time and do so take up the mind and phantasy that they make the ordinary and necessary business of life unacceptable and nauseous." He forswore drinking parties and vowed that he "would never again keep company in that manner or drink a health while he lived." Even when pressed to drink the King's health, "which was set up by too many as a distinguishing mark of loyalty and drew many into great excess after His Majesty's happy restoration, he would never dispense with his vow, though somewhat roughly treated for this." He worked sixteen hours a day and so neglected his dress that once he was taken by the press gang and only escaped being carried off by the intervention of some students from Lincoln's Inn. After that he saw the necessity of getting a new suit, but bargained so closely with the tradesman that at last the man, who knew his reputation for industry, said: "You shall have it for nothing if you will promise me £100 when you come to be Lord Chief Justice of England." Hale, however, paid. Years afterwards they met again, the one Chief Justice and the other an alderman of London.

Making Them Feel at Home.

In the course of a recent address to the Sussex Branch of the National Association of Probation Officers, Mr. Claud Mullins criticised the formality of police court procedure and asked: "What can be more disconcerting to comparatively simple folk than the sort of parade ground drill they are put through in a court?" Sir Edward Parry in the county courts realised this and did his best to make the poor people who came to him feel at home. Once a widow, entitled to some money under the Workmen's Compensation Acts, was only with difficulty persuaded to come to court at Sevenoaks to ask for some of it to cover the expense of a removal. In that town the judge sat in the police court building and used the inspector's best parlour as "chambers." When the good woman came in there, and was invited to sit in the armchair beside the judge seated on the sofa, with his book and inkstand before him on the little drawing-room table, she burst into tears. Asked what was the matter, she could only sob: "It's so 'omely! It's all so 'omely!" In another county court she had been kept waiting half a day, put into the witness-box in open court, told she was an extravagant woman and generally intimidated.

The Trouble of a Double.

At Glasgow recently one man pleaded guilty to offences in respect of which another man had been twice wrongly identified and arrested. They bore a striking resemblance to each other, with their long faces, aquiline noses and dark hair. In addition, they both had tattoo marks on their wrists. The basic unreliability of evidence of identification received its highest illustration in the tragedy of Adolf Beck at whose first trial eleven deluded women swore that he was the man who had cheated them of their jewellery, completely confusing him with his double, the swindler Wyatt, alias Weiss, alias Smith, while experts declared that specimens of the two men's handwriting came from the same pen. An earlier instance of mistaken identity was amusing enough, for the great Mr. Baron Gurney, when he was at the height of his practice at the Bar, was afflicted with a "double" in the person of a disreputable Old Bailey practitioner. It even happened once that a brief, not yet indorsed with Gurney's name, was handed to his double, by mistake, together with the fee. On discovery of the error, the papers were with immense difficulty recovered, but the fee never.

# Correspondence.

[*The views expressed by our correspondents are not necessarily those of* The Solicitors' Journal.]

## Rating and Valuation Act, 1925.

Sir,—The case shortly reported below may be of interest to conveyancers in that it appears to decide that a purchaser who has paid a proportion of the general rate to the vendor on completion, and afterwards leaves the premises void or vacates the premises during the rate period, cannot recover the amount paid to the vendor from the rating authority.

The case was heard on Monday, the 19th instant, before Judge Wethered at Axminster County Court. Mr. Cecil Forward, solicitor, appeared for Mr. A. E. Good, plaintiff, and I, as clerk, appeared for the Seaton Urban District Council, the defendants.

The plaintiffs claimed from the council the sum of £2 13s. 10d., being a proportion of rates paid in respect of property for the period 21st December, 1933, to 31st March, 1934.

On completion of the purchase of a piece of land, the purchasers had paid to the vendor the sum of £2 13s. 10d., being a proportion of the rates from the date of completion to the end of the rate period. Evidence as to actual beneficial occupation of the land during the period in question was conflicting. After hearing arguments as to the application of the Public Authorities Protection Act and as to the beneficial occupation of the premises, the judge said that he was satisfied that the Public Authorities Protection Act did not in this case apply for the benefit of the local authority. He was satisfied in his own mind that there had not been beneficial occupation, but the plaintiffs could not satisfy him of any cause of action, and having careful regard to s. 4 of the Rating and Valuation Act, 1925, he was satisfied that the vendor, had the property been void during their ownership, would have had a right of action against the council, but the vendors had been paid by the purchasers and therefore the vendors' right of action had ceased to exist.

On the other hand the purchasers had paid nothing to the council and there was no provision in the Rating and Valuation Act so far as he could see which gave them a right of action against the council. The claim was accordingly dismissed with the usual consequences.

Seaton, Devon. 22nd October.

F. C. B. Chadwick, Clerk to the Council.

# Reviews.

*The Tithe Act*, 1936, *and the Rules thereunder*. By R. Wynne Frazier, of Gray's Inn and the Midland Circuit, Barrister-at-Law. 1936. Demy 8vo. pp. xvi and (with Index) 204. London, Liverpool and Birmingham: The Solicitors' Law Stationery Society, Ltd. 12s. 6d. net.

On the principle *bis dat qui cito dat* this volume, which appears so soon after the coming into operation of the Tithe Act, 1936, will be doubly welcome to practitioners. The main part of the work, which consists of the text of the Act and annotations, with useful cross-references, is preceded by a short introduction on the history of tithe and the circumstances which led to the formulation of the scheme embodied in the new statute, and is followed by a series of appendices providing, *inter alia*, excerpts from earlier statutes (the new Act is not a consolidating measure), a digest of eight recent cases, a table for calculating the amount of a redemption annuity, and statutory rules and orders under the new Act, with the prescribed forms for use in connection therewith. There is a good index.

Mr. Charles Lewis Brockett Grover, solicitor, of Buxton, left £33,188, with net personalty £32,148.

# Notes of Cases.

## House of Lords.

### Eaton-Turner *v.* McKenna (Inspector of Taxes).

Lord Atkin, Lord Thankerton, Lord Russell of Killowen, Lord Macmillan and Lord Roche. 15th October, 1936.

Revenue—Income Tax—Profits from Employment Abroad—Residence in United Kingdom—Liability to Tax—Income Tax Act, 1918 (8 & 9 Geo. 5, c. 40), Scheds. D and E.

Appeal from an order of the Court of Appeal dismissing an appeal from an order of Singleton, J., dismissing an appeal by the taxpayer from a decision of the Commissioners for the Special Purposes of the Income Tax.

The appellant was employed by a company under written contracts by which his duties were ones to be performed entirely in West Africa. The appellant was entitled to have payments due to him made as he directed, and he directed the greater part of the payments from his employers to be made to him in the United Kingdom. The appellant was assessed in respect of those receipts for the years 1926–1927 to 1931–1932 under Sched. E to the Income Tax Act, 1918, that Schedule being applicable by virtue of s. 18 (1) of the Finance Act, 1922, which provides that such profits arising from an office, employment or pension as are by the Act of 1918 chargeable under Sched. D shall be chargeable under Sched. E, the rules of Sched. E applying accordingly.

Lord Atkin said that the question was whether the appellant's receipts were profits or gains which would be chargeable to tax under Sched. D of the Act of 1918. By para. 1 of that Schedule tax was chargeable "(ii) to any person residing in the United Kingdom from any . . . employment . . . whether . . . carried on in the United Kingdom or elsewhere." By para. 2 tax was made chargeable under Case II in respect of any employment not contained in any other Schedule. The appellant had contended that he was not properly taxable under Sched. D—or at any rate under Case II—because his employment was exclusively outside the United Kingdom. The answer to that contention was obvious on the plain words of the statute, the appellant having been found to be resident in the United Kingdom during the whole of the period, but he contended that the words "from any . . . employment . . . whether carried on in the United Kingdom or elsewhere," having been considered in *Colquhoun* v. *Brooks* (1889), 14 App. Cas. 493, that case afforded ground for saying that he should not be charged in accordance with what seemed to be the plain meaning of the Act. It had been held in that case that the taxpayer could only be assessed on so much of the profits arising to him from a trade carried on in Australia as was remitted to him in the United Kingdom. It was agreed here that, inasmuch as it had there been decided that a limit must be put on the extensive words of the Act with regard to trade, so here by analogy the words must be limited in respect of employment. In that case, however, it had been pointed out, firstly that the machinery of the Act was hopelessly defective for charging a person in respect of a trade carried on wholly abroad, and secondly that the taxpayer was chargeable under alternative cases. There were, however, no provisions in the Act inconsistent with the intention to charge the holder of an employment in respect of an employment exercised abroad. The question of machinery did not arise. A deficiency in the machinery of collection was an element to be considered, but was not conclusive, in deciding whether to give the words of an Act their plain meaning, or to cut them down. The machinery had been provided by the Act as now passed, and no difficulty remained on that point. The other conclusive element in *Colquhoun* v. *Brooks*, *supra*, was entirely lacking. There was no alternative case to which an employment could be referred. Inasmuch, therefore, as there was no difficulty about machinery and no alternative case, and as the words of the Act were absolutely clear on the face of them, as wide as possible, and referred expressly to employment outside the United Kingdom as well as employment within it, he (his lordship) was unable to see how the appellant could successfully contend that he had shown that the wide words of the Act must necessarily be cut down. The appeal must be dismissed.

The other noble and learned Lords concurred.

Counsel: *Needham*, K.C., and *Cyril King*, for the appellant; *the Attorney-General* (Sir Donald Somervell, K.C.) and *R. P. Hills*, for the respondent.

Solicitors: *Dawson & Co.*; *Solicitor of Inland Revenue.*

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

## Court of Appeal.

### Marchant *v.* Ford and Others (No. 2).

Greer and Greene, L.JJ., and MacKinnon, J. 14th October, 1936.

Practice—Two Actions for Libel—Different Passages in Same Book Relied On—Consolidation—Whether Publication One Transaction—Embarrassment—R.S.C. Ord. 16, r. 1, Ord. 49, r. 8.

Appeal from a decision of Greaves-Lord, J.

The plaintiffs, a father and daughter, issued separate writs claiming damages in respect of alleged libels in a book written by the defendant. The daughter relied on certain passages in the book alleging that they meant that she was a grossly immoral woman. The father relied on other passages, alleging that they meant that he was a brutal man whose treatment had caused the immorality of his daughter. Greaves-Lord, J., made an order under R.S.C. Ord. 49, r. 8, consolidating the two actions.

Greer, L.J., allowing the plaintiffs' appeal, said that the judge had power to join the actions. The publication of the book was one "transaction" and the words "out of the same transaction" in Ord. 16, r. 1, applied to it. Some common questions of law and fact arose in both cases. But the judge had disregarded the great embarrassment to the judge and jury of trying the two cases together. There would be hardship to the father in that matters completely irrelevant to his case would have to be tried. There should be no consolidation.

Greene, L.J., and MacKinnon, J., agreed.

Counsel: *Sir Patrick Hastings*, K.C., and *T. Mathew*; *Springman*; *V. Holmes*; *Gerald Slade*; *Hon. Ewen Montagu.*

Solicitors: *Theodore Goddard & Co.*; *Blundell, Baker & Co.*; *Oswald Hickson, Collier & Co.*; *Stanley Johnson & Allen.*

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

## Appeals from County Courts.

### Marshall *v.* London Passenger Transport Board.

Lord Wright, M.R., Romer, L.J., and Macnaghten, J. 13th October, 1936.

Limitation of Actions—Claim against Public Authority—Plaintiff Injured by Tram—Allegations of Negligent Driving—Expiry of Limitation—Whether Allegations of Neglect to Repair Highway can be Added—Public Authorities Protection Act, 1893 (56 & 57 Vict., c. 61), s. 1.

Appeal from Bloomsbury County Court.

On the 12th August, 1935, the plaintiff was injured in a collision with a tramcar. On the 15th October, he issued a writ indorsed with a claim for damages for personal injuries sustained by reason of the negligence of the defendants, their servants or agents. The statement of claim, delivered on the 30th October, gave particulars of negligence all relating to the

driving of the tram. The case having been remitted to the county court, particulars of claim were filed alleging acts of negligence against the driver. In December, a defence denying negligence was filed. In April, 1936 (after the expiry of the period limited by the Public Authorities Protection Act, 1893, for bringing an action against a public authority), the plaintiff sought leave to amend his particulars of claim by adding particulars of negligence, alleging a breach by the defendants of their statutory duty to maintain the road and tramlines in good condition. The learned county court judge refused leave.

LORD WRIGHT, M.R., dismissing the plaintiff's appeal, referred to s. 1 of the Public Authorities Protection Act, 1893, and went on to say that the writ was not in accordance with the form in the appendix to the Rules of the Supreme Court, 1883, which was: "The plaintiff's claim is for damages for injury to the plaintiff by the negligent driving of the defendant or his servants." That was intended to be the import of the writ as shown by the statement of claim and particulars of negligence. The question was whether the amendment now proposed involved a new cause of action within the meaning of the Public Authorities Protection Act, 1893. His lordship thought it did. An amendment should not be allowed if it would deprive the defendants of a defence under that Act or under the Statute of Limitations. (See *Weldon* v. *Neal*, 19 Q.B.D. 394, and *Lancaster* v. *Moss*, 15 T.L.R. 476.) This amendment was based on something quite different from negligent driving—a breach of a statutory duty which was a liability personal to the corporation and not capable of being delegated. It involved a different set of ideas and a different allegation of fact, and would have set up a new cause of action involving new considerations and new causes of damage, the only point of similarity being that the plaintiff had suffered certain injuries. Though injury was the gist of the action, it was only one element. The cause of action involved duty and breach and the amendment set up a different duty and a different breach. Only the damage was the same. The amendment could not be allowed.

ROMER, L.J. and MACNAGHTEN, J., agreed.

COUNSEL: *C. H. Gage; Montague Berryman.*

SOLICITORS: *Raymonds; Solicitor to the London Passenger Transport Board.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

## Espir and Others *v.* Basil Street Hotel, Ltd.

Slesser and Scott, L.JJ., and Eve, J.
13th October, 1936.

LANDLORD AND TENANT—LEASE OF PART OF PREMISES—SUB-LEASE OF RESIDUE OF TERM LESS LAST FIFTEEN DAYS—COVENANT AGAINST MAKING ALTERATIONS—REVERSIONARY LEASE TO SUB-TENANTS OF WHOLE OF PREMISES FOR 999 YEARS—BREACH OF COVENANT—ALTERATIONS BY SUB-TENANTS FOR HOTEL PURPOSES—DAMAGE TO REVERSION.

Appeal from West London County Court.

The plaintiffs, who held a lease of the first and mezzanine floors of premises in Basil Street, Knightsbridge, sub-let them for the unexpired residue of their term of ninety-eight years from the 25th December, 1910, less the last fifteen days, the sub-lease becoming subsequently vested in the defendants. The sub-lease contained a covenant by the sub-tenant not, without the written consent of the lessor, to alter the main walls, timbers, floors or ceilings of the demised premises. In 1935, the head landlords granted to the defendants a lease for 999 years of the whole of the premises (including that part which had been let to the plaintiffs), subject to the plaintiffs' interest. The defendants, who carried on the business of keeping an hotel, wished now to adapt the whole of the premises for that purpose. Without having first obtained the consent of the plaintiffs in accordance with their covenant, they made substantial alterations in the premises. There was evidence that the work was an improvement from the point of view of the hotel as a whole, and also that it would cost £450 to restore the work. The plaintiffs now sued the defendants in the county court in respect of their breach of covenant, limiting their claim to £100. The learned judge came to the conclusion that the plaintiffs had suffered damage to the extent of £60, inasmuch as before letting their premises they would probably have to do a certain amount of work by way of restoring them. He awarded that amount.

SLESSER, L.J., allowing the defendants' appeal, said that the right principle for assessing the damages was found in *Whitham* v. *Kershaw*, 16 Q.B.D. 613, at p. 616. The test was not how much would have to be spent to restore the premises to the same condition in which the tenant received them, but how much the reversion of the property had been diminished in value. In considering that, you were not limited to the duration of the reversion. Here it must be considered that the particular reversion could only last for fifteen days if the covenants were duly performed, though there was the possibility that the lease might fall in earlier through bankruptcy, disclaimer or failure to pay rent. But the defendants had acquired possession of the remainder of the premises, and in substance were entitled to possession of the whole throughout the whole period, using it as a hotel. The plaintiffs wished the court to imagine them coming into possession of their part of the premises for a substantial period during which they might let it, claiming to be entitled to ask that the premises be substantially restored, the reversion having been injured to the extent that the premises were no longer self-contained. Those matters considered in a proper case might be a reason for saying that the reversion had been injured in value, but in this case it could not be said that the reversion had been so diminished in value. The only interest which could practically be considered was the reversion of fifteen days. There had been no essential damage to it. This was not an action for waste but an action on the covenant. The plaintiffs should recover 40s. nominal damages.

SCOTT, L.J., and EVE, J., agreed.

COUNSEL: *Evershed*, K.C., and *Ricardo; Hallett*, K.C., and *Leonard.*

SOLICITORS: *Gisborne & Co.; T. Eggar & Son.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

## Wray *v.* Essex County Council.

Lord Wright, M.R., Romer, L.J., and Macnaghten, J.
15th October, 1936.

NEGLIGENCE—SCHOOLBOY TOLD BY MASTER TO CARRY OIL CAN WITH 6-INCH SPOUT—NO SPECIAL DIRECTIONS GIVEN—COLLISION WITH ANOTHER BOY—INJURY TO EYE BY SPOUT—LIABILITY—WHETHER CAN DANGEROUS IN ITSELF—DUTY OF MASTER.

Appeal from Ilford County Court.

A boy of thirteen at a school owned by the defendants was told by a master to carry an oil can with a 6-inch spout to another part of the school. No directions were given to him to hold it in any particular way. He carried the can by the handle with the spout pointing forwards. At the time boys were moving from class to class and, in turning a blind corner, he collided with the plaintiff, a boy of twelve, whose eye was penetrated by the spout, the sight being destroyed. At the time the plaintiff was trotting, though the school rules forbade the boys to run, but it was held that neither of the boys was negligent. In an action for damages the learned county court judge dismissed the claim of the plaintiff, holding that there was no duty on the master as a reasonable man to give the boy special instructions how to hold the can, and that the can was not a thing dangerous in itself.

LORD WRIGHT, M.R., dismissing the plaintiff's appeal, said that he agreed with the judge on both points. The case of things inherently dangerous held a special place in the law of

negligence. They were such things as if left might at any moment cause damage, like guns or pistols (see *Dixon* v. *Bell*, 5 M. & S. 198; *Sullivan* v. *Creed* [1904] 2 Ir. R. 317, at p. 329; *Williams* v. *Eady*, 10 T.L.R. 41; *Langham* v. *Governors of Wellington School*, 101 L.J. K.B. 513; *Chilvers* v. *London County Council*, 80 J.P. 246). It might not be possible to say what article was and what was not dangerous in itself by any general definition, but with particular articles there was no difficulty in drawing a line. A naked sword, a hatchet, a loaded gun, an explosive, were inherently dangerous since they could not be handled without risk. On the other hand, there were things which in ordinary use were only potentially dangerous—which, if there were negligence or mischance, might be a source of danger, though danger was not essential to their ordinary character. This can was not inherently dangerous. But it was argued that, even if it were not inherently dangerous, the master was bound to exercise "such care of his boys as a careful father would take" (see *Williams* v. *Eady*, 10 T.L.R. 41, at p. 42). It had to be considered whether there was something which the master should have anticipated and which he should have guarded against. But this was a misadventure which no one could reasonably have foreseen. Though he knew that boys were moving about the school, he could not have foreseen that the plaintiff would be trotting round a blind corner just at the time he did. If there was a foreseeable risk it was material to consider the chances of its eventuating, and if there was a real risk there was a duty to guard against it. But here there was nothing the master ought to have foreseen and no breach of duty.

ROMER, L.J., and MACNAGHTEN, J., agreed.

COUNSEL: *Douglas Lowe* (*Harold Brown* with him); *Sutton-Nelthorpe*.

SOLICITORS: *Ashby & Rogers; Sharpe, Pritchard & Co.*, agents for *E. S. Holcroft*, Clerk to the Essex County Council.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

### Homer *v.* Donisthorpe Colliery Co. Ltd.

Slesser and Scott, L.JJ., and Eve, J.
22nd October, 1936.

WORKMEN'S COMPENSATION—MINER'S NYSTAGMUS CERTIFIED BY CERTIFYING SURGEON—EMPLOYERS' APPEAL TO MEDICAL REFEREE—CERTIFICATE THAT WORKMAN WAS SO SUFFERING, BUT WAS FIT FOR LIGHT WORK ON SURFACE—FORM "P.ii" USED INSTEAD OF FORM "P.i"—WORKMEN'S COMPENSATION ACT, 1925 (15 & 16 Geo. 5, c. 84), s. 43 (1)—WORKMEN'S COMPENSATION (MEDICAL REFEREES IN ENGLAND AND WALES) REGULATIONS, 1932, reg. 32.

Appeal from Ashby-de-la-Zouch County Court.

A workman, believing himself to be suffering from miner's nystagmus, was examined by a certifying surgeon under s. 43 (1) of the Workmen's Compensation Act, 1925, and by him certified to be in fact suffering from the disease (which was mentioned in the Third Schedule of the Act) and to be thereby disabled from earning full wages at the work at which he had been employed. The employers appealed under s. 43 (1) (*f*) to the medical referee, who varied the certificate in certain respects. He certified that the man was "suffering from the scheduled disease known as miner's nystagmus, but is fit for light work on the surface." He further said that there was "increased susceptibility to a fresh attack should he again work below ground" and declared that he was "therefore disabled from earning full wages." The certificate was in Form P (ii) under the schedule to the Workmen's Compensation (Medical Referees in England and Wales) Regulations, 1932. The employers appealed to the county court and the learned judge held that, inasmuch as the medical referee had dismissed the employers' appeal to him, he should have employed Form P (i) and referred the matter for reconsideration by another medical referee. The workman appealed.

SLESSER, L.J., in giving judgment, read s. 43 (1) (*f*) of the Act and Reg. 32 of the regulations, and said that it had been objected that, whereas the medical referee had dismissed the appeal, he had used the form appropriate to allowing the appeal. But he had varied the certificate in several respects, as by stating that the man was fit for light work on the surface, and that there was increased susceptibility to a fresh attack should be again work below ground. Those qualifications seemed to amount to an allowance of the appeal in part. If the matter had remained there, the referee might properly have made the statement he made with regard to the man's condition, because he was finding that the workman was, to some extent, no longer physically incapacitated. But it had been further objected that the referee had used language in his certificate which prevented its being a certificate within s. 43 at all, inasmuch as the section required the referee to certify that the man suffering from the disease was "thereby disabled from earning full wages," and the referee here had substituted "therefore" for "thereby." This was not a mere matter of procedure and wording. The word "thereby" was actually found in s. 43 (1) (i). This was not a proper certificate, and, therefore, no certificate was ever before the county court judge and the workman was not entitled to an award of compensation. The rule whereby a county court judge might in exceptional cases, instead of sending a case back to the medical referee for the district, send it elsewhere and to another referee, had no application to this case. In the opinion of the workman's counsel, the case had turned on whether Form P (i) or P (ii) should have been used rather than on the substitution of "therefore" for "thereby." The employers had been arguing for reference to another referee, and the workman that either the matter should stand dismissed altogether or the appeal be allowed. Neither party was, therefore, sufficiently successful in the appeal to permit of costs being awarded. The appeal should be allowed, and the original application should stand dismissed, and there should be no costs of the appeal.

SCOTT, L.J. and EVE, J., agreed.

COUNSEL: *R. Paget; Hunter*, K.C., and *R. Norris*.

SOLICITORS: *C. Leslie Hale; Peacock & Goddard*, agents for *Elliot Smith & Co.*, of Mansfield.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

## High Court—King's Bench Division.

### Wurzal *v.* Houghton Main Home Coal Delivery Service Ltd. Same *v.* Atkinson and Others.

Lord Hewart, C.J., Swift and du Parcq, JJ.
28th October, 1936.

ROAD TRAFFIC—GOODS VEHICLE—INCORPORATED AND UNINCORPORATED SOCIETIES—EACH MEMBER A SHAREHOLDER—COAL DELIVERED TO MEMBERS IN LORRIES BELONGING TO SOCIETIES—DELIVERIES PAID FOR BY MEMBERS—PROFITS USED TO DEFRAY EXPENSES—WHETHER COAL BEING CARRIED FOR HIRE OR REWARD—ROAD AND RAIL TRAFFIC ACT, 1933 (23 & 24 Geo. 5, c. 53), 1933.

Appeals by cases stated from decisions of West Riding Justices.

Informations were preferred by the appellant Wurzal against the respondents under the Road and Rail Traffic Act, 1933, for failing to comply with condition 1 of a "C" licence of which they were holders. By the condition, holders of the licence are entitled to use the licensed vehicle for carriage of goods connected with their business, but the vehicle must not be used for the carriage of goods for hire or reward. It was alleged that the respondents had failed to observe the condition by using vehicles in January, 1936, for carrying coal for hire or reward, contrary to s. 9 of the Act. The following facts were proved or admitted in the first case: The respondent society was registered under the Industrial and Provident Societies Act, 1893, its object being to carry

on the business of haulage contractors by providing for its members (1) the delivery of home coal supplies from the Houghton Main Colliery; (2) transport facilities for the conveyance of its members to and from work at the colliery. By the society's rules, all those employed at the colliery were eligible for membership; no member could hold more than one share, no dividend or interest being payable on it, and shares not being transferable or withdrawable; no profits or funds were in the normal way distributable among the members. The prices charged by the society to members for the coal deliveries were, by arrangement, deducted from members' wages by the colliery company and then paid over to the society. The society's income was spent on expenses and in reducing the price of coal deliveries. In January, 1936, two of the society's lorries in respect of which the society held "C" licences were seen delivering coal at the houses of two members, and 2s. 1d. was deducted by the colliery company from the wages of each in respect of the delivery to him. In the second case, the respondents were members of an unincorporated society called the Dearne Valley Home Coal Delivery Service. The rules of the society were similar to those of the society in the first case, membership being restricted to those working for the Dearne Valley Colliery Co., Ltd. As in the first case, a lorry belonging to the society was seen delivering coal at the house of one of its members. When the society had applied to the licensing authority for a "C" licence for the vehicle, the authority had suggested as the practical course, since the society was unincorporated, that not more than three of its members should be nominated as responsible for the proper operation of the service, and that their names should appear on the licence. The respondents in the second case were so nominated. In the first case, it was contended for the respondents, *inter alia*, (1) that the payments made by members for coal deliveries did not constitute "hire or reward" because the recipients were members of the society, and the society's accumulated profits remained with the society for the ultimate benefit of the members; and (2) that the fact that the society was a legal entity apart from its members did not make the payments "hire or reward," because every member was a shareholder, and every shareholder was a member. It was contended for the appellant *inter alia*, (1) that, the society being a legal entity apart from its members, it was carrying the coal in its capacity as haulage contractors, and that members were paying it for doing so; and (2) that the restricted method of distribution of the society's accumulated profits, and the fact that its members had a proprietary interest in the assets, were immaterial for the present purpose. In the second case, it was contended for the respondents, *inter alia*, that the payment made by a member for a coal delivery did not constitute "hire or reward" because the recipient was a member of the society and, with his fellow-members, was joint owner of, *inter alia*, the lorry in which the delivery was made. For the appellant, it was contended, *inter alia*, that the proprietary interest of members in the society's assets was immaterial, and that the coal was carried for hire or reward. The justices in both cases accepted the respondents' contention, and dismissed the information.

Lord Hewart, C.J., said that, in his opinion, the appellant's contentions in the first case were right, and that the controlling fact was that the society was a legal entity apart from its members. The lorries in question belonged to the society, which was causing them to be used for hire or reward. It did not matter that the sums paid by members for the coal were not paid directly, but deducted by the colliery company and then passed on to the society. Conversely, in the second case there was no limited company, and that was the only material difference in the facts of the two cases. There was merely a collection of individual members, rather of the nature of a club. Where the transaction was not one between shareholder and company as in the first case, but between one member of an unincorporated society and his fellow-members, different considerations applied. Light was thrown on the matter by *Graff* v. *Evans* (1882), 8 Q.B.D. 373. There were certain points common to that case and the present. Field, J., had said, at p. 378, that he was unable to follow the reasoning of the magistrate in saying that the question there depended on whether or not a profit was being made on the sale of liquors. In like manner here, it seemed that the recipients of the coal deliveries were among the owners of the lorry making the delivery. To say that they were having their coal carried for hire or reward in the vehicle involved saying that they were hiring from themselves and rewarding themselves—a difficult conception. If the legislature had been minded to deal with the topic of carriage of goods apparently for hire or reward in vehicles belonging to societies of this kind, nothing would have been easier than to do so. It looked as if the legislature had had the topic before them and had decided to exclude from the operation of the Act goods carried in these circumstances. If the argument of the appellant in this case were to prevail, the consequences would be rather hard on associations of partnership. The first appeal must be allowed. The second appeal was dismissed.

Swift and du Parcq, JJ., agreed.

Counsel: *Valentine Holmes*, for the appellant; *N. R. Fox-Andrews*, for the respondents.

Solicitors: *Treasury Solicitor*; *J. S. & P. Walsh*, Leeds.

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

## Court of Criminal Appeal.

**R.** *v.* **Perry. R.** *v.* **Dransfield.**

Lord Hewart, C.J., du Parcq and Goddard, JJ.
19th October, 1936.

Gaming—Gambling Machine at Café—Insertion of One Penny—Possibility of Winning More—Balls Controlled by Player—Question of Skill—Whether Material—Gaming Act, 1845 (8 & 9 Vict. c. 109), s. 4—Betting Act, 1853 (16 & 17 Vict. c. 119), s. 1—Gaming Houses Act, 1854 (17 & 18 Vict. c. 38), s. 4.

Appeals against conviction.

The appellant, Perry, kept a café at certain premises, in which was installed a machine into which pennies could be inserted. On insertion of a penny, metal balls were released which then travelled to their destination past pins. Their ultimate destination could be controlled to some extent by the manipulation of levers. When the balls had completed their course, certain sums might be returned to the player, which varied in accordance with the particular destination reached by the balls. The defendant, Dransfield, had some interest in the machine, and collected from it any money obtained from players. The appellants contended that the machine was not unlawful, and witnesses were called to demonstrate their skill or lack of it. An indictment was preferred charging Perry with keeping a common gaming house contrary to s. 4 of the Gaming Act, 1845, with using her café for unlawful gaming contrary to s. 4 of the Gaming Houses Act, 1854, and with keeping a betting house contrary to s. 1 of the Betting Act, 1853. Dransfield was charged under the two first-named sections with being an accessory to, and aiding and abetting, the offences, and, under s. 1 of the Act of 1853, with using a betting house. The case was tried by Swift, J., and a jury at the Yorkshire Spring Assizes in May, 1936, and both appellants were convicted. Perry was fined 1s. and Dransfield 40s., and the machine was ordered to be destroyed. They now appealed against their conviction on the ground, among others, that the judge misdirected the jury in telling them that the only question to be decided was whether the machine was a betting machine. It was contended on their behalf that the real question for decision ought to have been whether there was an invitation to put 1d. into the machine

in order to get more than that out of it, or whether there was an invitation to insert the 1d. in order to obtain the opportunity of exercising skill.

LORD HEWART, C.J., said that, having regard to the combined effect of the Acts of 1845, 1853 and 1854, this was an eminently proper conviction. The judge had expressed the pith of the matter when, in his summing up, he said "the offence against the law comes, if there be an offence against the law, when a man puts in a penny in the hope that by his skill he will extract 2d. or 4d. or 8d. . . ." He (his lordship) had no doubt that, on the correct interpretation of the different enactments involved, these convictions must be upheld. With regard to that part of the sentence which ordered the destruction of the machine, undoubtedly, if the proper steps had been not merely begun but continued, the order would have been proper. It appeared, however, that there had not been before the court evidence to show that, the proper warrant having been issued under the Gaming Act, the parties had been brought before the court in consequence of that warrant. As, therefore, it seemed that there was no jurisdiction to complete that fragment of the sentence which, however, was recorded on the conviction, the fair course was, in the opinion of the court, that that part of the conviction should be quashed. The appeals would, however, be dismissed.

COUNSEL: *H. Hylton-Foster* for the appellants; *G. H. B. Streatfeild*, for the respondent.

SOLICITORS: *Louis Godlove*, Leeds; *Town Clerk*, Leeds.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

# Societies.

## University of London.

### THE LAW AND PRACTICE RELATING TO INDECENT LITERATURE.

Sir EDWARD TINDAL ATKINSON, lecturing on this subject at King's College, on 21st October, said that the offence of publishing indecent and obscene literature, pictures and other matter was originally a common law offence. It was generally classified under libel, though a defendant could not plead justification, privilege or fair comment as for a criminal libel, but might plead the public welfare. "Russell On Crimes" (9th ed., p. 1366) suggested that it more properly belonged to the law of public nuisance. The earliest reported case was *R.* v. *Curl* (1727) 17 State Trials 788, which put an end to the suggestion that this branch of the law was the prerogative of the ecclesiastical courts. Publication was an essential element, and possession, if it did not amount to procuring with intent to publish, was not indictable. In the case of *R.* v. *Hicklin* (1868), L.R. 3, Q.B. 360, it was pointed out that a medical treatise containing information necessary for the instruction of students and practitioners and published so as to reach such persons would probably not be treated as obscene, but if exhibited in a shop for every passer-by to see might contravene the law. This case contained a test of obscenity: whether the tendency of the matter published was to deprave and corrupt those whose minds were open to such immoral influences and into whose hands the publication might fall. This definition was of limited value in judging publications by the shifting standard of to-day.

After outlining the statute law governing obscene matter exhibited in newspapers, shops and public places, its importation and its transmission through the post, Sir Edward pointed out that in a prosecution under the Obscene Publications Act, 1857, the defendant was often not concerned to vindicate copies of a doubtful novel which had been seized along with unquestionably obscene matter. The novel might therefore be condemned largely in default of defence rather than on its demerits. He advocated a procedure which would allow the author and publisher to be heard, but at the same time he pointed out that courts of summary jurisdiction did not make orders for destruction without careful enquiry.

In the practical application of the law, proof of publication did not often offer much difficulty, because it was not usually denied. In post-office cases proof of handwriting was generally necessary. The contest, if any, usually ranged round the far more difficult question of whether the matter was obscene in law. In general, there were two classes of literature of which the publication had increased remarkably during the last few years; books which masqueraded under the guise of scientific works and purported in extreme detail to deal with sexual relations and aberrations; and books which, under the guise of literature, used sexual matters as colours in making a picture of modern life to such exclusion of other elements as to give sex a wholly disproportionate prominence. In the first class, the publishers' announcements paid lip service to science, and in the second, the books ranged from purely and obviously pornographic works to novels in which semi-indecent passages had been deliberately introduced to sell the book better. The degree of possible corruption in the mind of the reader must necessarily vary. At one end no difficulty was met, but, on ascending the scale, doubt arose, often coupled with a profoundly irritating factor: the query whether a prosecution would do more harm than good by advertising the book and so creating an artificial demand for copies published abroad. The prosecution, in proving probable corruption, could not rely on the contention that the book would have a depraving influence upon an adolescent unless there were special circumstances, such as a particular effort to sell it to the young. On the whole, therefore, the lot of the responsible authorities was not a happy one.

The question of whether a print transgressed was one of mixed law and fact, but a judge would not remove a case from the jury unless he came to the conclusion that the prosecution had upon their own evidence failed to show that the book could be classed as indecent. Efforts had been made to adduce expert evidence, but in Sir Edward's opinion this must always be inadmissible, because ultimately the expert must attempt to pre-judge the issue that was being tried. He attacked a common fallacy, that there is some form of literary censorship in this country, and pointed out that whereas stage plays were subject to censorship and there was a certain control over other stage performances in public, the author and publisher of literary matter must read *Hicklin's Case* (*supra*), and weigh up the risk of criminal proceedings. He did not think publishers would like a State censorship and hazarded the view that the Home Secretary might well be averse from adding such a duty to the great burdens already resting upon him. Some critics had maintained that even the shifting standard of public opinion was overlaid by a variation in standard between different counties and towns, and suggestions had recently been made that such cases should be heard in special courts, removed to London or dealt with by the Public Prosecutor. Special courts, Sir Edward thought, were alien to English legal traditions, and the percentage of cases in which the champions of art and literature had had cause to complain must be remarkably small. He always preferred, in considering a prosecution in respect of a book published for general sale, to adopt the common law as the basis for the proceedings; the author and the publisher thus had the fairest opportunity of justifying the character of the book and, if they wished, of going before a jury.

## Incorporated Law Society for Cardiff and District.

### JUBILEE DINNER.

The jubilee dinner of this Society was held at Cardiff on the 30th October last.

The guests included The Rt. Hon. Viscount Sankey, Mr. H. A. Dowson, President of The Law Society, The Lord Bishop of Llandaff, Presidents of the Monmouthshire, Swansea, Llanelly, Bridgend, Pontypridd, Merthyr, Aberdare and West Wales Law Societies, Presidents of a number of other professional bodies, Mr. Roland Vaughan Williams, K.C., Recorder of Cardiff, and Mr. O. Temple Morris, M.P., Recorder of Merthyr, and many other prominent persons.

Lord Sankey, in proposing the toast of the "Incorporated Law Society for Cardiff and District," welcomed Mr. J. W. Morris, formerly clerk to the magistrates of Penarth and Barry, who was the only survivor of those who had signed the Society's memorandum of association on 16th March, 1886. He also referred to past Presidents and members who had attained eminence, not only in their own profession, but in other respects, including Sir Donald Maclean, who had become a Cabinet Minister, Sir Harry Cousins, late registrar in the Cardiff District Registry, Aldermen W. H. Pethybridge, J. T. Richards and W. B. Francis, who became Lord Mayors of the City of Cardiff, and a number of others who had distinguished themselves in the realms of sport by playing Rugby football for Wales. He stated that these and other members of the Society had taken part in the professional and public life of the city, greatly to the advantage of the citizens, and that societies like the Cardiff Society added honour and prestige to the profession, and did a great public

work in maintaining the high standard which had always been the boast of the profession.

Mr. Edward Thomas, President of the Cardiff Society, in responding to the toast, pointed out how its activities had been extended in the advancement of legal education and services to poor persons, and stated that those not in the legal profession would be surprised at the great amount of work voluntarily performed by the ordinary practitioner. He emphasised the right of a person to be tried in his own county, and pleaded for the retention of the system of trial at assizes, as now established.

The toast of "The Guests" was proposed by Mr. Cecil G. Brown, formerly town clerk of Cardiff, and was responded to by Mr. H. A. Dowson, President of The Law Society.

## The Law Society.

### PRELIMINARY EXAMINATION.

The following candidates (whose names are in alphabetical order) were successful at the Preliminary Examination held on the 14th and 15th October, 1936:

Edward Joseph Adolph, Clifford Allmark, Patrick Tindle Keith Anderson, George Alfred Ashurst, Robert Edward Thomas Birch, Stanley Walter Bishop, Eric Goldby Butler, John Anthony Cavenaugh, Cyril Bernard Croft, Desmond Dalley, Martin Oswell Daniel, Charles Robert Henson Davenport, Simon Myer Freeman, Robert Gregson Gordon, Lionel Scholes Halliwell, Tom Gordon Hemming, Joseph Lloyd Hibbert, Arthur Ernest Eaglefield Hull, John Arthur Jones, Cecil William Phillips Langley, Evelyn Massey, Eric Archie Nowell, Neil Oughtred, John Pounder, Colin Rawstron, Harold Robinson, Philip John Roper, Alfred Henry Rushton, Geoffrey Sharp, James Blair Sloan, Ronald George Wadham Smith, Harry Stelling, Charles Lindsay Sutherland, Harold Swaine, Jack Stripling Syrett, Peter Tyzack, Douglas Henry Vandamm, William Anthony Walker, Richard West, Kenneth Wilson, Anthony Charles Hacklett Wood.

No. of candidates, 76; passed, 41.

## Berks, Bucks and Oxfordshire Incorporated Law Society.

### ANNUAL GENERAL MEETING.

The Annual General Meeting of the Berks, Bucks and Oxfordshire Incorporated Law Society was held at the Clarendon Hotel, Oxford, on Thursday, the 8th October. Prior to the meeting a luncheon was held for members and their guests, at which twenty persons were present. The Society was pleased to welcome as its guest Lieut.-Colonel N. Hillary, M.C., F.S.I., F.L.A., A.S., F.A.I., the Chairman of the Berks, Bucks and Oxon Branch of the Chartered Surveyors' Association. The following members were present at the meeting:—Mr. H. C. Dryland (President), Mr. J. C. B. Gamlen (Vice-President), and Messrs. H. L. C. Barrett, A. J. Clarke, R. P. Clarke, G. H. Darby, J. M. Eldridge, H. L. Franklin, B. Haines, H. J. Harrison, E. F. Kift, B. S. Lewis, C. M. R. Peecock, M. B. Parry-Jones, H. C. Rose, C. F. Schnadhorst, J. Snow, S. E. Wilkins, E. Woodward, and E. W. Brain (Secretary).

The minutes of the last Annual General Meeting having been approved and signed by the President, the Treasurer's statement of the accounts of the Society for the year ended the 25th March last was approved, on the motion of the President, seconded by Mr. A. J. Clarke.

The President then submitted to the meeting the report of the Committee for the past year and in doing so touched on several of the matters referred to in such report. The President referred to the new rules relating to undercutting and touting made under the Solicitors Act, and said that probably the meeting would desire the reconsideration of the question of introducing a minimum scale of conveyancing charges in the Society's area.

In speaking on the report, Mr. S. E. Wilkins said that he was disappointed in the number of replies received to the circular letter sent out by the Secretary relating to the proposal to establish a minimum scale, and that he felt the matter was one which should be reconsidered by the committee or a sub-committee appointed for the purpose. Mr. H. L. C. Barrett, in supporting Mr. Wilkins' suggestion, said that he would like to see the old pre-war scale adopted as the minimum scale for the district. The Secretary reported that the Reading and District Solicitors' Association was considering the whole question and was proposing to make certain recommendations to the Society. He thought that when such recommendations were received it would be a convenient time to reconsider the matter. It was proposed by Mr. S. E. Wilkins, seconded by Mr. H. L. C. Barrett and duly carried that the matter be referred to the committee for reconsideration, and if they thought fit to formulate a scheme for the introduction of a minimum scale in the Society's area.

Mr. R. P. Clarke enquired whether The Law Society's Conditions of Sale could not be printed in smaller type similar to that used for the National Conditions of Sale, so that all the conditions appeared on the form of contract. He said that he thought this might be able to be done and the price of the complete form reduced to a figure nearer the cost of the National Conditions of Sale. He explained that his reason for putting forward the suggestion was that there was some doubt as to whether a set of conditions incorporated by reference in a contract was binding on a purchaser. Mr. E. Woodward spoke in support of the proposal, and it was agreed that the Secretary be instructed to bring the matter to the notice of The Law Society.

A resolution adopting the committee's report was unanimously carried on the motion of the President, seconded by Mr. J. M. Eldridge.

The Secretary next proposed in accordance with notice that a donation of £10 10s. be made out of the Society's funds to the Solicitors' Benevolent Association in the name of the President. This was seconded by the Vice-President, who referred to the keen interest which the President had taken in the Society's affairs during his year of office. The resolution was carried unanimously.

The President then moved the appointment of Mr. J. C. B. Gamlen as President for the ensuing year, and in doing so said that although it was departing from precedent to nominate a member who had already been President, he felt sure it was the wish of the Society that Mr. Gamlen should fill the office again as he performed his functions so ably before, and that he should have the opportunity of wearing the President's badge which he had so generously given to the Society. Mr. H. L. C. Barrett, in seconding the motion, endorsed the President's remarks, and the motion was carried unanimously. Mr. Gamlen, in reply, stated that he felt deeply honoured at the unique distinction which had been conferred on him and that he would to the best of his ability perform his duties of office during the coming year.

Mr. H. L. C. Barrett was elected Vice-President, and Mr. E. W. Brain was elected Secretary and Treasurer for the ensuing year.

The following members were elected to serve on the committee until the next annual meeting: Messrs. H. R. Blaker, R. P. Clarke, P. Darby, H. C. Dryland, H. L. Franklin, J. Moorwood, F. J. Ratcliffe, S. E. Wilkins and E. Woodward.

It was agreed that the fixing of the time and place of the next annual meeting be left to the Committee, and that if possible the meeting should be held in Buckinghamshire.

It was resolved that the Society's Committee, with the addition of Mr. G. S. Blaker, be the Local Committee of the Solicitors' Benevolent Association for the ensuing year, and that the representative of the Society to the Standing Council of that association be the newly-appointed President, Mr. J. C. B. Gamlen.

The Secretary next proposed the resolution which was on the agenda in the name of Mr. S. Brain, of Reading, and in doing so expressed his father's apologies for absence owing to indisposition. The Secretary said that the question of estate duty on policies of insurance effected to meet the liability for death duties was one which had been receiving a good deal of attention in recent times, and he thought the Society might usefully pass the resolution and see that it was sent to the proper authorities. In support of the resolution the Secretary read a letter by Sir William Mountain which had appeared in *The Times* in March last. Mr. E. Woodward seconded the resolution and a number of members spoke on the subject. It was ultimately felt that the resolution as drawn hardly expressed the views of the meeting, and with the consent of the proposer and seconder it was carried in the following form: "That a representation be made to the Chancellor of the Exchequer for an alteration in the existing law relating to death duties enabling any policy on the life of a deceased person and taken out particularly to meet estate duty be treated as a separate estate to the extent of the amount of the estate duty payable on the estate."

This concluded the business of the meeting, which closed with a vote of thanks to the retiring President.

## The Hardwicke Society.

A meeting of the Society was held on Friday, 30th October, at 8.15 p.m., in the Middle Temple Common Room, the Hon. Treasurer, Mr. G. E. Llewellyn Thomas, in the chair. Mr. A. A. Baden Fuller moved "That the Blackshirts ought to be suppressed." Mr. W. L. Fearnehough opposed. There also spoke Miss D. Knight Dix, Mr. Whitfield, Mr. J. A. Grieves,

Mr. Campbell Prosser, Mr. Amphlett, Mr. Walter Stewart, Mr. Lewis Sturge (Hon. Secretary), Mr. Wellwood, Mr. Lincoln, Mr. Cussen, Mr. G. E. Llewellyn Thomas (Hon. Treasurer), Mr. Willis and Mr. T. W. South. The hon. mover having replied, the house divided and the motion was lost by three votes.

## The Dublin Law Students' Debating Society.

The one hundred and seventh session of The Law Students' Debating Society, King's Inns, Dublin, was opened on Thursday, 29th October, with a large attendance of members. The meeting was also the opening meeting of the Michaelmas Term. Mr. Fleming, Barrister-at-Law, was in the chair. The subject for debate was "That the strike weapon should be prohibited." The motion was moved by Mr. McDermott, supported by Messrs. Neville, Mathieson and Burke. Mr. D. Higgins led for the opposition, followed by Messrs. Mason, England, O. N. Uadhaig McDevitt, Kirkpatrick and Preston. On the motion being put to the house it was defeated by a substantial majority.

A meeting of the society was held at King's Inns on Monday, 2nd November, the subject for debate being of a legal nature, in that of *Reg.* v. *Prince*, reported in L.R. 2 C.C.R. Mr. Durcan, B.L., was in the chair. Mr. Jennings opened for the appellant, it being by way of appeal from the courts below, followed by Messrs. Heasy, McDevitt and Neville. Mr. McDermott, together with Messrs. Mason and Peart, replied for the prosecution. Mr. O. N. Uadhaigh appeared for the Purity League. After hearing lengthy arguments from both sides, the Chairman dismissed the appeal.

## University of London Law Society.

Mr. R. Sutton, K.C., addressed the University of London Law Society at Gower Street, on Tuesday, 3rd November. He said that lawyers should educate public opinion to realise that, even if an Act of Parliament was obnoxious when put into practice in daily life, it was a good citizen's duty to obey it so long as it remained on the Statute Book. A bad law could not be made good by breaking it. The lawyer did not only need to know the law, but also the reason for it. Some were historical and might be described in some cases as anachronisms. He anticipated early legislation as to the doctrine of consideration. In some cases its present form involved hardships. It was proposed that any promise reduced to writing should be enforceable, whether there was any consideration or not. Referring to the law of contract, he said it had with the help of the judges made us a great commercial nation. He commended to all law students the careful study of comparative law. He deplored the prevalence of the Star Chamber methods of Orders in Council, laid formally on the table of the Houses of Parliament, but possibly without debate. Lawyers in Parliament should make their fellow members realise the importance of making themselves acquainted with these orders before giving their assent.

On the motion of the President (Mr. Betuel, Barrister-at-Law) a hearty vote of thanks was passed for the speaker.

## United Law Society.

A meeting of the Society was held in the Middle Temple Common Room on Monday, the 2nd November, at 8 p.m. Mr. S. A. Redfern proposed the motion: "That this House would welcome (*a*) the abolition of indirect taxation, and (*b*) the limitation of parliamentary franchise to taxpayers." Mr. R. A. Hall opposed. Messrs. Burke, Taylor, C. H. Pritchard, Hill, Owens, McQuown, Harris, Lawton, Gladstone (a visitor), Permewan and Vine Hall also spoke. Mr. S. A. Redfern replied and the motion was put as a whole to the House and lost by four votes. Attendance sixteen, including one visitor.

The secretaries of the Society are now: J. H. Vine Hall, 27 Lansdowne Road, Holland Park, W.11, and R. J. Kent, 5 New Square, Lincoln's Inn, W.C.2.

## The Union Society of London.

A meeting of the Society was held at the Middle Temple Common Room, on Wednesday, the 4th November, at 8.15 p.m., the President (Mr. S. R. Lewis) being in the chair. Mr. Robert W. Orme proposed the motion: "That trade unions should be non-political." Mr. D. F. Brundrit, barrister-at-law, opposed, and Messrs. J. P. R. Oakes, A. D. Russell-Clarke, H. F. Ryan, E. J. Rendle, M. Buckland, C. R. Hurle-Hobbs, N. T. Fedrick, H. Moses, H. M. Fraser and C. H. Butterfield also spoke. Mr. Orme replied. Upon division the motion was lost by one vote.

# Parliamentary News.

## Progress of Bills.

### House of Lords.

Select Vestries Bill.
Read First Time. [3rd November.
Voluntary Euthanasia (Legalisation) Bill.
Read First Time. [4th November.

### House of Commons.

Outlawries Bill.
Read First Time. [3rd November.
Trunk Roads Bill.
Read First Time. [4th November.

# Legal Notes and News.

## Honours and Appointments.

Mr. Justice CLAUSON has been elected Treasurer of Lincoln's Inn for the year beginning 11th January, 1937, in succession to Lord Russell of Killowen.

Mr. THEODORE LINTON THORP, K.C., has been elected a Bencher of Lincoln's Inn in place of the late Sir Arthur Colefax, K.B.E., K.C.

Mr. CONOR MAGUIRE, Attorney-General for the Irish Free State, has been made a Judge of the High Court. The new Attorney-General will be Mr. James Geoghegan, T.D., who was formerly Minister for Justice.

Mr. PERCY NICKSON, solicitor, of High Wycombe, Clerk to the Beaconsfield and Burnham Magistrates and Deputy Coroner for South Buckinghamshire, has been appointed Clerk to the High Wycombe Borough Magistrates, in succession to Mr. J. C. Parker, who has retired. Mr. Nickson was admitted a solicitor in 1928.

Mr. ERIC BELLINGHAM, Deputy Town Clerk of Rotherham, has been appointed Town Clerk of Stockton. Mr. Bellingham was admitted a solicitor in 1928.

## Professional Announcements.

(2s. per line.)

Mr. HUGH V. HARRAWAY, solicitor, of 2, Field Court, Gray's Inn, W.C.1, announces that he has taken into partnership his son, Mr. MICHAEL TALBOT HARRAWAY, and that the style of the firm will be HUGH V. HARRAWAY & SON.

## Notes.

Mr. C. C. Henderson, Town Clerk of Tynemouth, has tendered his resignation for health reasons. Mr. Henderson, who was admitted a solicitor in 1914, succeeded Mr. S. Wilson as Town Clerk when he retired in 1930.

Mr. F. G. Bowles, a London solicitor, has been selected as the Socialist candidate in the forthcoming by-election at Preston. He stood for North Hackney in 1929, 1931 and 1935. Mr. Bowles was admitted a solicitor in 1925.

It is announced that Mr. Albert Cottam will resign his office as Town Clerk of Fleetwood in March next on reaching the age of sixty-five. Mr. Cottam was appointed Clerk and Solicitor to the then Fleetwood U.D.C. in 1911, and became Town Clerk when Fleetwood received its charter in 1933. He was admitted a solicitor in 1908.

Mr. Vernon Powell, who died last week, says *The Times*, was one of the best known barristers' clerks in the Temple. He was for thirty-eight years clerk to Sir Francis Newbolt, K.C., and especially as clerk to the Senior Official Referee since the war, was well known and much respected by many solicitors and their clerks. He was an uncle of the Metropolitan Magistrate, Mr. F. Powell.

The Parliamentary Secretary to the Ministry of Health, Mr. R. S. Hudson, M.P., has appointed Mr. Ronald Tree, M.P., to be his Parliamentary Private Secretary. The Minister of Health, Sir Kingsley Wood, has appointed Mr. I. F. Armer to be an Assistant Secretary. The Deputy Secretary to the Minister of Health, Mr. E. J. Maude, C.B., has appointed Mr. J. S. Forrest to be his Private Secretary.

The relation of law and the State was discussed by Mr. John Cameron, K.C., at a meeting of Glasgow University Law Society in the University Union. Speaking of the lessons which the law could teach the State and duties which the State owed to the law, Mr. Cameron said that the law, having its roots deep in the past, was a reminder that society was continuous, and a warning that progress must be slow to be sure.

Judge Shewell Cooper, who is retiring from the position of Assistant Judge of the Mayor's and City of London Court, was presented last Tuesday with a gold watch by the Lord Mayor, members of the Law and City Courts Committee, and officials of the Court. A luncheon in his honour was given at the Guildhall by the Chairman (Mr. A. E. Watts) and members of the Law and City Courts Committee of the Corporation of London.

Lectures on "British Justice" are being given at Bryanston School, Blandford, this term, says *The Times*. Mr. Laurence Housman opened the series recently with a talk on "Justice in Time of War.' He will be followed by Mr. Alexander Paterson, Commissioner for Prisons, on "The Criminal"; Major Lyndon Morris, Chief Constable of Devon, on "The Policeman's Point of View"; Mr. A. C. Morrison, Chief Clerk at Bow Street Police Court, on "The Probation System"; Mr. J. L. S. Vidler, Governor of H.M. Borstal Institution, Portland, on "The Borstal System"; and Mr. John Murray, Principal of University College, Exeter, on "British Justice."

## Wills and Bequests.

Sir Thomas Cato Worsfold, LL.D., J.P., solicitor, of Mitcham, senior partner in the firm of Messrs. Wainwright and Co., of Staple Inn, W.C., and Maida Vale, W., left unsettled estate of the gross value of £20,589, with net personalty £17,340.

Mr. Herbert James Westbrook, solicitor, of Walton Inferior, Cheshire, left £9,202, with net personalty £7,252. Subject to life interests, he left £200 to the vicar and churchwardens of St. Thomas Church, Stockton Heath; £1,000 to Warrington Infirmary; and the remainder of the property equally between the Church of England Waifs' and Strays' Society and the Church Army.

Mr. George Gabriel Glasspool Wheeler, solicitor, of St. Ives, Hunts, left £13,025, with net personalty £4,032.

### IMPORTANT NOTICE TO SOLICITORS.

ANNUAL PRACTISING CERTIFICATES.

Practising certificates for the year 1935–36 will expire on the 15th November, and should be renewed before the 15th December.

All certificates on which the duty is paid after the 1st January next must be left with The Law Society for entry, and the names of solicitors taking out their certificates after that date cannot be included in the Law List for 1937.

# Court Papers.

## Supreme Court of Judicature.

| Date. | Emergency Rota. | Appeal Court No. I. | Group I. Mr. Justice Eve. Witness. Part II. | Mr. Justice Bennett. Non-Witness |
|---|---|---|---|---|
| | Mr. | Mr. | Mr. | Mr. |
| Nov. 9 | Andrews | Blaker | Blaker | Hicks Beach |
| ,, 10 | Jones | More | *Jones | Blaker |
| ,, 11 | Ritchie | Hicks Beach | *Ritchie | More |
| ,, 12 | Blaker | Andrews | Andrews | Ritchie |
| ,, 13 | More | Jones | *More | Andrews |
| ,, 14 | Hicks Beach | Ritchie | Hicks Beach | Jones |
| | Group I. Mr. Justice Crossman. Witness. Part I. | Mr. Justice Clauson. Witness. Part I. | Mr. Justice Luxmoore. Non-Witness. | Mr. Justice Farwell. Witness Part II. |
| | Mr. | Mr. | Mr. | Mr. |
| Nov. 9 | *Jones | *More | Ritchie | *Andrews |
| ,, 10 | *Hicks Beach | *Ritchie | Andrews | More |
| ,, 11 | *Andrews | *Blaker | Jones | Hicks Beach |
| ,, 12 | More | *Jones | Hicks Beach | *Blaker |
| ,, 13 | *Ritchie | Hicks Beach | Blaker | Jones |
| ,, 14 | Blaker | Andrews | More | Ritchie |

*The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

# Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 19th November, 1936.

| | Div. Months. | Middle Price 4 Nov. 1936. | Flat Interest Yield. £ s. d. | ‡Approximate Yield with redemption £ s. d. |
|---|---|---|---|---|
| **ENGLISH GOVERNMENT SECURITIES** | | | | |
| Consols 4% 1957 or after | FA | 116 | 3 9 0 | 2 18 7 |
| Consols 2½% | JAJO | 85½ | 2 18 6 | — |
| War Loan 3½% 1952 or after | JD | 106⅝ | 3 5 8 | 2 19 5 |
| Funding 4% Loan 1960-90 | MN | 117½ | 3 8 1 | 2 18 10 |
| Funding 3% Loan 1959-69 | AO | 102¼ | 2 18 8 | 2 17 2 |
| Funding 2½% Loan 1956-61 | AO | 93½ | 2 13 6 | 2 17 7 |
| Victory 4% Loan Av. life 23 years | MS | 116 | 3 9 0 | 3 0 5 |
| Conversion 5% Loan 1944-64 | MN | 118 | 4 4 9 | 2 3 11 |
| Conversion 4½% Loan 1940-44 | JJ | 110 | 4 1 10 | 2 7 2 |
| Conversion 3½% Loan 1961 or after | AO | 108 | 3 4 10 | 3 0 7 |
| Conversion 3% Loan 1948-53 | MS | 104¼ | 2 17 6 | 2 11 0 |
| Conversion 2½% Loan 1944-49 | AO | 101¼ | 2 9 4 | 2 6 3 |
| Local Loans 3% Stock 1912 or after | JAJO | 98 | 3 1 3 | — |
| Bank Stock | AO | 380 | 3 3 2 | — |
| Guaranteed 2¾% Stock (Irish Land Act) 1933 or after | JJ | 89 | 3 1 10 | — |
| Guaranteed 3% Stock (Irish Land Acts) 1939 or after | JJ | 97 | 3 1 10 | — |
| India 4½% 1950-55 | MN | 115 | 3 18 3 | 3 3 1 |
| India 3½% 1931 or after | JAJO | 99¾ | 3 10 2 | — |
| India 3% 1948 or after | JAJO | 88 | 3 8 2 | — |
| Sudan 4½% 1939-73 Av. life 27 years | FA | 118 | 3 16 3 | 3 9 3 |
| Sudan 4% 1974 Red. in part after 1950 | MN | 114½ | 3 9 10 | 2 14 10 |
| Tanganyika 4% Guaranteed 1951-71 | FA | 115 | 3 9 7 | 2 13 11 |
| L.P.T.B. 4½% "T.F.A." Stock 1942-72 | JJ | 111 | 4 1 1 | 2 3 2 |
| Lon. Elec. T. F. Corpn. 2½% 1950-55 | FA | 96 | 2 12 1 | 2 15 6 |
| **COLONIAL SECURITIES** | | | | |
| Australia (Commonw'th) 4% 1955-70 | JJ | 111 | 3 12 1 | 3 4 4 |
| *Australia (C'mm'nw'th) 3¼% 1948-53 | JD | 105 | 3 11 5 | 3 4 10 |
| Canada 4% 1953-58 | MS | 113 | 3 10 10 | 3 0 2 |
| *Natal 3% 1929-49 | JJ | 102 | 2 18 10 | — |
| *New South Wales 3½% 1930-50 | JJ | 102 | 3 8 8 | — |
| *New Zealand 3% 1945 | AO | 101 | 2 19 5 | 2 17 4 |
| †Nigeria 4% 1963 | AO | 115 | 3 9 7 | 3 3 4 |
| *Queensland 3½% 1950-70 | JJ | 102 | 3 8 8 | 3 6 2 |
| South Africa 3½% 1953-73 | JD | 107xd | 3 5 5 | 2 19 5 |
| *Victoria 3½% 1929-49 | AO | 101 | 3 9 4 | — |
| **CORPORATION STOCKS** | | | | |
| Birmingham 3% 1947 or after | JJ | 99 | 3 0 7 | — |
| *Croydon 3% 1940-60 | AO | 101 | 2 19 5 | 2 13 1 |
| Essex County 3½% 1952-72 | JD | 106½ | 3 5 9 | 2 19 8 |
| Leeds 3% 1927 or after | JJ | 97 | 3 1 10 | — |
| Liverpool 3½% Redeemable by agreement with holders or by purchase | JAJO | 107 | 3 5 5 | — |
| London County 2½% Consolidated Stock after 1920 at option of Corp. | MJSD | 82xd | 3 1 0 | — |
| London County 3% Consolidated Stock after 1920 at option of Corp. | MJSD | 96½xd | 3 2 2 | — |
| Manchester 3% 1941 or after | FA | 97½ | 3 1 6 | — |
| *Metropolitan Consd. 2½% 1920-49 | MJSD | 100½xd | 2 9 9 | — |
| Metropolitan Water Board 3% "A" 1963-2003 | AO | 99 | 3 0 7 | 3 0 8 |
| Do. do. 3% "B" 1934-2003 | MS | 98½ | 3 0 11 | 3 1 1 |
| Do. do. 3% "E" 1953-73 | JJ | 102 | 2 18 10 | 2 16 11 |
| Middlesex County Council 4% 1952-72 | MN | 113½ | 3 10 6 | 2 18 7 |
| † Do. do. 4½% 1950-70 | MN | 115 | 3 18 3 | 3 3 1 |
| Nottingham 3% Irredeemable | MN | 96 | 3 2 6 | — |
| Sheffield Corp. 3½% 1968 | JJ | 108 | 3 4 10 | 3 2 0 |
| **ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS** | | | | |
| Gt. Western Rly. 4% Debenture | JJ | 116 | 3 9 0 | — |
| Gt. Western Rly. 4½% Debenture | JJ | 127½ | 3 10 7 | — |
| Gt. Western Rly. 5% Debenture | JJ | 138½ | 3 12 2 | — |
| Gt. Western Rly. 5% Rent Charge | FA | 135½ | 3 13 10 | — |
| Gt. Western Rly. 5% Cons. Guaranteed | MA | 133½ | 3 14 11 | — |
| Gt. Western Rly. 5% Preference | MA | 125 | 4 0 0 | — |
| Southern Rly. 4% Debenture | JJ | 114½ | 3 9 10 | — |
| Southern Rly. 4% Red. Deb. 1962-67 | JJ | 112½ | 3 11 1 | 3 5 6 |
| Southern Rly. 5% Guaranteed | MA | 133½ | 3 14 11 | — |
| Southern Rly. 5% Preference | MA | 125 | 4 0 0 | — |

*Not available to Trustees over par. †Not available to Trustees over 115.
‡In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

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Total Funds invested in the purchase of Reversions and Life Interests or in Loans upon them: £1,800,000.

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## STAFFORD COURT,

KENSINGTON HIGH STREET, W.8.
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**NUMBER of BEDS and COTS, 681.**
(Including 27 Cubicles and 149 Rooms for Paying Patients)

Over and above the income from its endowments, the Hospital is dependent upon support from other sources for general purposes to the extent of over

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The Governors earnestly appeal for Testamentary Gifts, additional Annual Subscriptions and Donations towards Maintenance, and for Contributions towards the Re-endowment Fund of the Charity.
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Phone: Hop 1086.
Treasurer: The Rt. Hon. LORD NUFFIELD, O.B.E., D.C.L.
Bankers: THE BANK OF ENGLAND.

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## INFORMATION REQUIRED.

(2s. per line.)

AMELIA MARY LAY, deceased.—Will any solicitor or other person who prepared or witnessed or who may have knowledge of the custody of a Will made by the above deceased, late of 9, Alvanley Court, 250, Finchley Road, London, N.W.3 (at one time residing at No. 5, Ranulf Road, Hampstead, N.W., and previously at No. 97, St. Mary's Mansions, Paddington, London, W.), please COMMUNICATE with Messrs. Cartwright, Cunningham, Haselgrove & Co., Solicitors, 4, Paternoster Square, London, E.C.4.

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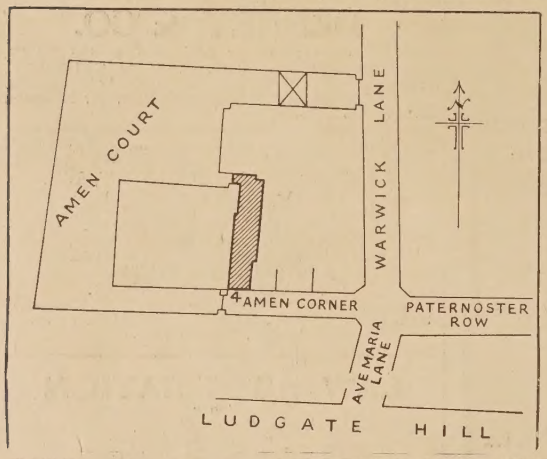
**On THURSDAY, 19th NOVEMBER, 1936, at 2.30 p.m.**




*By Order of Trustees.*

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| 71 & 73, WAGHORN RD. .. | 62 yrs. | £10 p.a. |
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| **BETHNAL GREEN.**—13, 15, 17, 19, 21 & 23, PUNDERSON'S GARDENS, BETHNAL GREEN RD. .. .. .. .. .. | 59 yrs. | £31 10s. p.a. |
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Between Cambridge Road and Globe Road and close to Bethnal Green Gardens.

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FREEHOLD CORNER SHOP PREMISES.

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Particulars, Plans, &c., from Chief Solicitor, Alexander Eddy, Euston Station, London, N.W.1 (Tel.: Euston 1234); Divisional Solicitors, Beale & Co., 12, Newhall Street, Birmingham 3. (Tel.: Central 3505-6); Chief Land and Estate Manager, W. H. C. Clay, Euston Station, London, N.W.1 (Tel.: Euston 1234); District Estate Manager, E. C. Dewick, L.M.S. Railway Company, Derby Station (Tel.: Derby 1100); Auctioneer, Henry F. Cobb, 17, Victoria Street, London, S.W.1 (Tel.: Abbey 6188-9).

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*Company's Electric Light and Power. Also Gas and Water. Main Drainage.*

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VACANT POSSESSION ON COMPLETION.

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Illustrated Auction Particulars with Conditions of Sale and Orders to View may be obtained from the Solicitors, Messrs. HUGH-JONES & FLINN, 7, Arundel Street, Strand, W.C.2, and from the Auctioneers, HARRODS, LTD., 62-64, Brompton Road, S.W.1. Surrey Office: West Byfleet.

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## FOR SALE BY AUCTION

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## FREEHOLD GROUND RENT

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DETACHED and DOUBLE-FRONTED HOUSE about 80ft. back from the road; carriage sweep; 4 magnificent reception rooms, 7 bed rooms, 2 dressing rooms, 3 bath rooms, non-basement domestic offices; central heating, fixed wash basins, etc.; remodelled and most attractive old-world garden, in all over half an acre. For SALE PRIVATELY or by AUCTION on the 18th inst.

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